

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

September 21, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, September 21, 2000 at 1:00 in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Chris Carraher, Chair; James Barfield (late arrival); Frank Garofalo; Bud Hentzen; Bill Johnson; Richard Lopez (late arrival); Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes (late arrival); George Platt; Harold Warner; and Ray Warren. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner, Barry Carroll, Associate Planner; and Karen Wolf, Recording Secretary.

1. Approval of minutes for July 27, 2000 and August 17, 2000.

CARRAHER "The first item of business will be the approval of the MAPC minutes for July 27, 2000 and the August 17, 2000 meetings. We will take them one at a time. Are there any corrections to the minutes?"

MOTION: That the Planning Commission approve the minutes of July 27, 2000 as submitted.

MCKAY moved, **HENTZEN** seconded the motion, and it carried unanimously (9-0).

MOTION: That the Planning Commission approve the minutes of August 17, 2000 as submitted.

MCKAY moved, **HENTZEN** seconded the motion, and it carried unanimously (9-0).

CARRAHER "Right now, we need to deviate from our agenda. In your packets, fellow Commissioners, there should be a proposed By-Law change. Because of some conflict or because we are not sure how it happened, it didn't get listed on the agenda. I would like to put it on the floor and have somebody make a motion to have the change in the By-Laws be considered.

MOTION: That the By-law change be added to the agenda.

GAROFALO moved, **MCKAY** seconded the motion, and it carried unanimously (9-0).

CARRAHER "In your packet, there should be a proposed amendment to the By-Laws. It is in regards to the composition of the sub-committees, both the Subdivision and the Advance Plans Committee. After the meeting two weeks ago, myself, Marvin and Jerry met in consideration of how to go about appointing members to each of the respective sub-committees.

In our discussion, Mr. Michaelis expressed a wish to serve on the Subdivision Committee, and I in turn, support that. The conflict comes in on the By-laws in Article IV, Section II where the Vice-Chair, that being Mr. Michaelis is automatically appointed to the Advance Plans Committee. Marvin, could you please give us a little background on how that came to be?"

KROUT "We have gone through several versions of this, it is probably just an evolving thing. At first we had, if some of you older members remember, we had six members of the Subdivision Committee and six members of the Advance Plans Committee, and then when we made some changes, we required equal membership from both of those committees. Then we realized that we had the Vice Chair, which is not the most awesome responsibility, except when the Chair is not here. So we thought that the Vice-Chair at least ought to have a seat on one of these committees and it was kind of arbitrary to assign it to the Advance Plans committee at the time.

We realize it is probably a good idea to involve everybody on the Planning Commission in one or another of these two committees. So our suggestion to you is that instead of having six and six and then the Vice-Chair on the Advance Plans, that we divide the Planning Commission into committees of seven and seven with no more than four members of either committee being either city appointed or county appointed, so that there is a balance on each of the committees. The Chair and the Vice-Chair can serve on either committee as the Chair decides. That way, everyone is involved in the process and we do have a balance, but there is a little more flexibility in terms of accommodating some of the preferences the people expressed the last time we met."

CARRAHER "Are there any questions or commentary with regards to the proposed change?"

WARREN "Now, what you just suggested here, do you see that already drafted into this proposal? We are looking at a proposal here. Is what he just explained what we would be voting on?"

CARRAHER "On the blue memo, the front page, yes."

WARREN "That front page will be incorporated into the Bylaws in that manner then?"

KROUT "Yes. It will be in the revised By-Laws."

CARRAHER "Basically, what I am wanting to happen is not to make it obligatory that the Vice-Chair be automatically assigned to the Advance Plans Committee, but have that option open to whether or not the Vice-Chair can serve on either subcommittee. Are there any further questions in regards to the By-laws?"

WARREN "We have brought up this one item, and I assume that now that we have these By-laws open for amendment that any other amendments would be in order to discuss at this time? Any other conditions of change would this be an appropriate time to talk about those?"

CARRAHER "In regard to the Subdivision?"

WARREN "To the By-laws. Amending the By-laws. I guess what I am getting at is that I have heard two or three Commissioners discuss, and I certainly agree, that Page 5, Item D needs discussion. It says 'prior to any motion on an application, Commissioners shall disclose the nature of any ex parte contacts and of any information obtained through those contacts that may have a bearing on their decision'.

I find that whole thing to be very subjective. I don't know for sure how you arrive at what may or may not be bearing on your decision. So with the Chair's permission, I would like to discuss this part of the By-laws also."

CARRAHER "I can appreciate that, Mr. Warren. What I would like to have happen is this is a particular issue, I would like to keep the scope on this particular part of the By-laws, but if you want to discuss this, either after we discuss the issue on the floor or if you would have time to prepare a proposal for the next meeting, I would be more than open to that. I want to keep the scope at one particular issue at a time."

WARREN "Okay. I take it, then, that there is a time-frame on this particular issue that you are wanting to address now?"

KROUT "Yes, because we are wanting to appoint the Subdivision Committee and the Advance Plans Committee."

WARREN "Okay. Then I would just like to state publicly that I would like to bring these By-laws back into focus again as it would relate to some other items."

CARRAHER "Okay. Then the Chair would be more than pleased to work with you and any other of my colleagues on that. Are there any questions or commentary with regards to the By-law proposal that is on the floor? Seeing none, I will open the floor to a motion."

MOTION: That the Planning Commission approve the new By-law changes as presented.

WARREN moved, **GAROFALO** seconded the motion.

CARRAHER "Are there any questions or commentary with regards to the motion on the floor?"

HENTZEN "Do I understand that there will be seven members on each committee, and the Chair and the Vice-Chair won't necessarily end up on the same committee?"

CARRAHER "The possibility is there. If you are asking me if I am going to appoint both Mr. Michaelis and I on the same committee for this term, the answer would be no. I would offer that to you."

GAROFALO "Maybe we ought to consider putting in there, for posterity, that the Vice-Chair would be on one committee, and the Chair would be on the other committee, or words to the effect that both can't serve on the same committee."

PLATT "That difference does that make?"

GAROFALO "I am just addressing a concern that Bud had. That would be one solution, if that is a problem. I am not saying that it is."

HENTZEN "I was just asking an information question. I don't have a problem with the proposal."

MCKAY "Years ago, when I first got on the Planning Commission, the Chair and the Vice-Chair were automatically ex-officios on each committee. It was six and six when we first organized. "

KROUT "That sounds familiar."

MCKAY "Yeah, and I think what happened was because they were saying that the reason the Advance Plans for the Vice-Chair was because they thought they would automatically move into the Chair for the next year and they would have some idea and some feel about what was going on for Advance Plans. That hasn't happened here in the last 3-5 years. I think that is possibly the reason why this has come up. It used to be that the Chair and Vice-Chair were automatically on both committees. They could attend either one or none of them."

CARRAHER "Are there any further questions or commentary in regards to the motion on the floor?"

MARNELL "I just want to make it clear, are we just replacing the first three paragraphs of that section? This is not the new section, and we are leaving that last paragraph on the Quad County Planning quorum in place?"

KROUT "Right."

CARRAHER "That would be true. Are there any further questions or commentary before we move into a vote? We will now move into a voice vote."

VOTE ON THE MOTION: The motion carried unanimously (10-0).

2. **Appointment of Subdivision Committee, Advance Plans Committee, and nomination of delegate to Quad-County Planning Forum.**

CARRAHER "The next item of business will be the appointment of the Subdivision Committee, the Advance Plans Committee and the nomination of a delegate to the Quad-County Planning Forum. As I discussed earlier, after the last MAPC meeting, I got together with Mr. Michaelis and Mr. Krout to get their input as well as your requests on which subcommittee that you would all like to serve on. I will just announce what they are. For the Subdivision Committee, I am going to appoint Mr. Johnson as the Chair and the remainder of the Subdivision Committee is as follows: Mr. Michaelis; Mr. Lopez; Dr. Platt; Mr. Warren; Mr. Barfield and Mr. Warner.

As for the Advance Plans Committee, I am appointing Mr. McKay as the Chair, and the rest of the Advance Plans Committee as follows: Mr. Garofalo; Mr. Marnell; Mr. Hentzen; Ms. Osborne-Howes; and myself. There is a vacant seat, so if we do get a new appointee in the near future, the chances are that they will be serving on the Advance Plans Committee. Are there any questions in regards to the appointments made to the Advance Plans or the Subdivision Committee?"

KROUT I just want to mention that on the next Subdivision Committee, the mailout has already gone out. It went out to the old Subdivision members, so Commissioners Johnson and Warner: we will have two packets to give you this afternoon. But that means that there are two others who were on Subdivision Committee who don't need to come next week. Can we figure out who those are real quick? John McKay is the only one because we now have seven members on the Subdivision Committee. And just this time we don't have the large plats, the fold-out plats because we have sent out all of the ones that we had. So you will have to work without those for the next week or two."

CARRAHER "The next item of business would be the nomination of a delegate to the Quad-County Planning Forum. I would like to open the floor for nominations."

MCKAY "Mr. Chair, could Mr. Krout kind of give us a description of what the responsibilities are on this?"

KROUT "The Quad-County Planning Forum's membership is made up of the elected County Commissioners from Sedgwick, Harvey, Reno and Butler Counties. They meet on a quarterly basis, once every three months, I think it is on the second Monday of the month, in a rotating location in one county or another. The only non-elected member of that body is the Metropolitan Area Planning Commissioner, because you are the Metropolitan Planning Organization for transportation purposes, and because you represent a larger area and more regional concerns.

There aren't any other responsibilities, there is not a lot of homework to do for the job, and the meals are usually pretty good. There is some travel involved. If that is really a difficulty, we probably could pay for the travel. It is never beyond the adjoining county though."

HENTZEN "Mr. Chair, I would like to volunteer for that. If someone else wants to do it, that is okay with me, too, but I would be glad to do it."

CARRAHER "Okay. Mr. Hentzen has volunteered as a nominee. Are there any other nominations? Seeing no objection, I will close the nominations and open the floor for a motion."

MOTION: That Commissioner Hentzen become the delegate to the Quad-County Planning Forum.

MCKAY moved, **WARREN** seconded the motion, and it carried 10-0.

3. Consideration of Subdivision Committee recommendations

CARRAHER "Items 3/2, 4/1, 4/6 and 4/8 need to be pulled for debate."

JOHNSON "I will abstain from Item 4/2. I have a conflict on that one."

CARRAHER "Okay, for the record, Mr. Johnson will not be considering Item 4/2, due to a possible conflict."

MCKAY "I will be abstaining on Item 4/8."

CARRAHER "Are there any other issues that need to be pulled for debate or any other statements made in regards to those issues? Seeing none, I will open the floor to a motion on the remaining Subdivision issues."

MOTION: That Subdivision Committee items 3/1; 3/3; 3/4; 3/5; and 3/6 be approved subject to the Subdivision Committee recommendations. **MCKAY** moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

3/1. SUB 2000-66 - Final Plat of ASCENSION LUTERAN CHURCH 2ND ADDITION, located east of 135th Street West, south side of Maple.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for any guarantees or easements. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A reserve should be platted for the detention area. No guarantees are required.
- D. Traffic Engineering needs to comment on the access controls. The plat proposes two access openings along Maple. The final plat shall reference the access controls in the plat's text. Traffic Engineering has required 175 feet between the openings, which shall be denoted on the face of the plat.
- E. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
- P. The MAPC Chairman needs to be revised to reference, "Christopher S. Carraher".

3/3. SUB2000-74 - One-Step Final Plat of OPERATING ENGINEERS ADDITION, located on the south side of 95th Street South, east of Ridge Road.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. The Health Department has required a restrictive covenant prohibiting non-domestic uses on the site until public sewer is available.
 - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
 - C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. The operation of equipment on adjoining property to the west could impact the floodplain and permits may be required.
 - D. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
 - E. A "Notice of Protective Overlay" document indicating the Protective Overlay has been filed with the MAPD shall be submitted.
 - F. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
 - G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
 - H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
 - I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
 - J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
 - K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
 - L. Perimeter closure computations shall be submitted with the final plat tracing.
 - M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
 - N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
 - O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
 - P. The MAPC Chairman needs to be revised to reference, "Christopher S. Carraher".
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3/4. SUB2000-75- One-Step Final Plat of DREILING ACRES ADDITION, located on the south side of 31st Street South, east of 167th Street West.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is approved.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. The Applicant shall coordinate removal of the terraces with Natural Resources Conservation Service (721-6127). A minimum pad of 1418 M.S.L. shall be established.
- D. The plat proposes two access openings along 31st St. South. The Subdivision Committee has approved two openings.
- E. As this plat is located within three miles of the City of Wichita, the final plat tracing shall include a signature block for the Wichita City Council.
- F. The MAPC Chairman needs to be revised to reference, "Christopher S. Carraher".
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/5. DED2000-22 - Dedication of a Utility Easement from Asa D. and Otilia Hill Stevens, for property located north of Central, west of Zoo Boulevard.

OWNER/APPLICANT: Asa D. and Otilia Hill Stevens, 756 Westridge, Wichita, KS 67203

LEGAL DESCRIPTION: That part of Lot 17, Westridge Acres, Sedgwick County, Kansas, described as:

Beginning at a point on the north line of said Lot 17, that is at an assumed bearing of south 89°19'44" East, a distance of 145.40 feet from the northwest corner of said lot; thence south 89°19'44" East, a distance of 4.02 feet; thence south 4°30'04" East, a distance of 70.24 feet to a point on the south line of said lot; thence north 89°22'00" West, on said south line, a distance of 4.02 feet; thence north 4°30'04" west, a distance of 70.24 feet to the point of beginning.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2000-57 and is being dedicated as a requirement by City Engineering to increase the 16-foot easement to the 20-foot standard.

Planning Staff recommends that the Dedication be accepted.

3/6. DED2000-23 - Dedication of Access Controls from Deere and Company, a Delaware Corporation, by H.R. Anciaux, for property located on the northeast corner of West Street and Southwest Drive.

OWNER/APPLICANT: Deere and Company, C/O H.R. Anciaux, 9401 Indian Creek Parkway, Suite 1050, Bldg. 40, Overland Park, KS 66210

LEGAL DESCRIPTION: Lot 1, John Deere Acres, Wichita, Sedgwick County, Kansas.

This Dedication is a requirement of Lot Split No. SUB 2000-67 and is being dedicated for access control except for two openings along West Street.

Planning Staff recommends that the Dedication be accepted.

Item taken out of order:

3/2. SUB2000-22 - Final Plat of SHOAL CREEK ADDITION (formerly Whitewood Addition), located on the west side of 143rd Street East, south of Central.

- A. In order to allow for the lot sizes being platted, and since the plat is adjacent to the City of Wichita, the applicant shall request annexation into the City. Upon annexation, the property will be zoned SF-6, Single-Family residential and permit the lot sizes being proposed. The final plat shall not be scheduled for City Council consideration until annexation has occurred.
- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall be with the County for service through the Four-Mile Creek sanitary sewer system. On the final plat tracing, appropriate wording shall be added to the Mayor's signature block indicating the City's agreement to allow a County sewer district to be formed within the City. A revised sanitary sewer/utility layout is requested. Off-site sewer easements are required.
- C. The applicant shall guarantee the extension of City water to serve the lots being platted.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. City/County Engineering needs to comment on the status of the applicant's drainage plan. A drainage guarantee is required. As drainage from the site is directed onto the Kansas Turnpike, a letter shall be required from KDOT indicating their agreement to accept such drainage.
- F. Complete access control is required along the Kansas Turnpike. The dedication of access controls shall be referenced in the plat's text on the final plat.
- G. City Fire Department needs to comment on the 2,400-ft cul-de-sac (Siefkes/Whitewood Court) which exceeds the 1,200 maximum length standard of the Subdivision regulations. City Fire Department requests an emergency access easement to provide two points of access along Reserve D, Block A.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.

- J. The plat consists of lots that contain under 6,000-sq. ft., the minimum lot standard of the SF-6 district. The Cluster Development option in the Subdivision Regulations require that any reduction in lot size is offset by the provision of permanent open space. The Applicant has included a table indicating that the amount of open space provided in the Reserves (210,946 sq. ft.) exceeds the cumulative total reduction in lot area (7,303 sq. ft.).
- K. The MAPC Policy Statement regarding Cluster Development states that each open space area shall be a minimum of 10,000 square feet and that no lot reduced in area shall be more than 500 feet from the nearest open space area. Lots 36-39, Block E are not located within the required 500 feet from Reserve E. A modification from this design standard has been approved.
- L. In addition to the standard restrictive covenant required per Item H above, the Subdivision regulations require the submittal of a restrictive covenant addressing the Reserves associated with the clustering development. The covenant shall ensure that the open space will not be further subdivided in the future, that the use of open space will continue in perpetuity, and that the common undeveloped open space shall not be turned into a commercial enterprise admitting the general public at a fee.
- M. The lots in Block E shall be renumbered beginning with Lot 1.
- N. The terminus of Whitewood Court to the west shall be reconfigured as a circular turnaround.
- O. Traffic Engineering needs to comment on the need for improvements to 143rd St. East. Traffic Engineering has required the construction of a decel lane.
- P. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- Q. The pipeline easement on Lot 26, Block E, needs to be located.
- R. A dimension needs to be added on Lots 5 and 6, Block D.
- S. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- T. City Fire Department needs to comment on the plat's street names. The City Fire Department has met with the Applicant to revise the street names.
- U. The applicant shall guarantee the installation of the interior streets. This guarantee shall include a sidewalk along one side of Whitewood/Siefkes. In lieu of sidewalks on Siefkes Court and Whitewood Place/Whitewood Court, the Applicant has agreed to submit an alternate sidewalk plan denoting sidewalks around Reserve E.
- V. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- W. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- X. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Y. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Z. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- AA. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- BB. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil

and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- CC. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- DD. Perimeter closure computations shall be submitted with the final plat tracing.
- EE. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- FF. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional utility easements.
- GG. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.
- HH. The MAPC Chairman needs to be revised to reference "Christopher S. Carraher".
- II. The plat's text shall include 'neighborhood swimming pool' as a permitted use in Reserve A; and
- JJ. A Restrictive Covenant shall be submitted that requires a turnaround be provided on Lot 6, Block D; and Lots 12, 22 and 40, Block A.

STRAHL "This plat was approved by the Subdivision Committee last week. Pursuant to the meeting, the applicant informed staff of his intention to include a neighborhood swimming pool within reserve 'A', which is located right there (indicating) in the northern portion of the plot.

Although typically permitted as a Conditional Use, the Zoning Code allows for a neighborhood swimming pool to be permitted by right if it is identified as a permitted use in the platting of the reserves. A site plan needs to be submitted at the time the final plat is approved. The applicant has submitted the required site plan to staff today and seeks approval of the plat with this revision."

CARRAHER "Are there any questions for staff regarding this matter by the Commission? Seeing none, is there anybody in the audience who is wanting to speak either for or against this item? Seeing none, I will move it back to the Commission. Are there any questions or commentary?"

WARREN "The applicant is not here to speak on this?"

CARRAHER "My apologies, I am new at this. Is the applicant here?"

EWY "Not a problem. I am with the Baughman Company, agent for the applicant. We have no further comment and would answer any questions that you might have."

WARREN "Russ, I asked in the Subdivision meeting, and was assured that lots such as Lots 6 in D, we had over in Block A-40 and 22. I questioned how you are going to get out of those without backing down the street, and I was assured that there would be a turn-around within the lot or a back-up."

EWY "I believe that is correct."

WARREN "Do you have a restrictive covenant that would ensure that, or how could we be assured that that is going to take place on that lot?"

EWY "I can't answer that. I do not know."

WARREN "Russ, I would hate to see that lot develop."

CARRAHER "Are there any other questions for the applicant?"

WARREN "Could I ask the applicant, would you object to filing a Restrictive Covenant that would so guarantee that the turn-around would be on the lot so that they could come out?"

EWY "We would be agreeable to looking into filing a covenant."

CARRAHER "Are there any further questions for the applicant? Thank you, Mr. Ewy. Just to give the gallery a fair opportunity, is there anybody in the gallery who would like to speak either for or against this issue? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved, subject to putting that condition of turn-around in those four affected lots in the covenant.

WARREN moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

4/1. DR00-08 - Proposed Amendment to Subdivision Regulations - Platting Exemptions.

This amendment to the Subdivision Regulations will implement a requirement for owners of property, which is unplatted and exempt from the Subdivision regulations. These owners would be required to file a Restrictive Covenant with the Register of Deeds Office that prohibits the transfer of portions of their property unless that land is platted (if under 20 acres). This Restrictive Covenant would need to be filed before any issuance of a platting exemption by County Code Enforcement.

In the past, property owners in the County have obtained platting exemptions from County Code Enforcement Office and then circumvented the Subdivision Regulations by selling portions of their property that would be required to be platted. It is intended that this restrictive covenant would help to alleviate this situation.

Planning staff has reviewed this amendment and related Restrictive Covenant with the County Code Enforcement Office, Register of Deeds Office, and County Legal Department and recommends its adoption.

NEIL STRAHL, Planning staff "This is a proposed amendment to the Subdivision regulations, and regards platting exemptions. This amendment addresses unplatted land that is exempt from the Subdivision Regulations. This would typically be land of 20 acres and above. The amendment was prepared by staff in response to a growing problem in the county.

The County Code Enforcement informed us that the owners of unplatted land, again 20 acres and above, are obtaining building permits for construction on their unplatted land and then selling off portions of the property. In some cases, the owners are circumventing the Subdivision Regulations by using the same land to qualify for more than one platting exemption. As an example, an owner of 20 acres would obtain a building permit for a new home and does not have to plat, due to the size of the site. He then keeps five acres for the house and sells off 15 acres. The new owner of the 15-acre site would then combine the 15 acres with an adjoining 5 acres to create a total of 20 acres, which would be exempt from platting. So we have the same 15 acres being used twice to qualify for a platting exemption.

This amendment is intended to alleviate this situation by putting owners on notice that unplatted land that is currently exempt from Subdivision regulations will need to be platted before any transfer of land occurs and the Restrictive Covenant would be filed with the Register of Deeds before the County Code Enforcement Office would issue a permit on any unplatted land. Are there any questions for staff?"

WARREN "I promise to be quiet after this. No, I don't. We discussed this on two or three occasions in Subdivision Committee. I have checked with some counsel on this and the objection that they had to this thing is that what Neil is talking about is already against the law. We already have an ordinance covering that. So what we are doing is passing an ordinance that says you can't disobey the ordinance. They say that by and large, that is not very good for law, to pass a law to say that you can't disobey a law. That is, by and large, what we are doing here.

The second thing, I would like to see that sample copy of the Restrictive Covenant, which I didn't find a copy of attached, before we vote on this."

STRAHL "It should be in your packet. It is right after the staff report."

WARREN "Okay. The third thing is that all Restrictive Covenants that I have had anything to do with, if I had so control of the land, I could go in and void out the Restrictive Covenants. As long as I don't have to ask any other landowners to join in with me, I can do that. So I don't know what keeps the landowner from filing this and then going in and deleting it or filing another that would be a change to this. I think we have problems with this and it needs further study before this committee votes on it."

STRAHL "In response to your last question, we do have a clause in there that the covenant does run with the land, binding all successors to title the property."

WARREN "That is only until I decide to void it out, and then it not binding all successors. We have, all of us who have had anything to do with land, and filed Restrictive Covenants, have later come in and deleted them and filed new ones with new restrictions. I see nothing in here that would prohibit a landowner from doing that. I think if it were worded right and if it was in effect that the landowner's agreement with the City/County through some kind of a developer agreement might do it, but I don't think you are going to do it with this."

KROUT "In the interest of time, we do have a long hearing, and I have no objection to deferring this until the next Planning Commission meeting so that we can talk about the issue you are raising. The issue about Restrictive Covenants can be

raised with regard to all of the other covenants that we file on Subdivision plats, so maybe we ought to ask the attorneys whether or not any of them are worth their weight.

In referring to an ordinance, the purpose of the covenant is for notification purposes, to let a future potential buyer be on notice that he is going to have to plat the property and not be surprised when he find out that even though he has 15 acres instead of 5 acres, he is not exempt from platting. It is just to provide some notification because most people don't read the Subdivision Regulations before they buy land."

MARNELL "If we are going to defer this item, I won't make my comment now."

PLATT "I just want to comment that what is being proposed here is nothing unusual at all in terms of the way we operate our governmental system. We pass laws or codes or ordinances setting up speed limits on highways and then we turn right around and pass another one saying that we must post them every so many feet or so many miles on the highway so that people know about it. There is nothing unusual about this at all."

CARRAHER "Are there any further questions or commentary regarding the issue? What is the pleasure of the Commission?"

MOTION: That the item be deferred.

MCKAY moved, **MARNELL** seconded the motion, and it carried unanimously (10-0).

4/2. VAC2000-00033 - Request to vacate alley right-of-way, described as:

The west 160 feet of the east-west alley right-of-way, Block 3, replat of John McCormick's Addition to Wichita, Sedgwick County, Kansas, located south of McCormick between Elizabeth and Martinson.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 29, 2000, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described alley right-of-way, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of the alley right-of-way described in the petition should be approved subject to the following condition:

1. The Applicant shall guarantee the closure of the alley returns or construct the vacated alley return to a private driveway standard.
2. The vacated alley shall be retained as a utility easement.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following conditions:

1. The Applicant shall guarantee the closure of the alley returns or construct the vacated alley return to a private driveway standard.
2. The vacated alley shall be retained as a utility easement.

CARRAHER "Is there anybody here to speak on this item? What is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

MARNELL moved, **MCKAY** seconded the motion, and it carried unanimously. (9-0) Johnson abstained.

4/3. VAC2000-00035 - Request to vacate a portion of a building setback, described as:

Vacation of a portion of a 75-foot building setback located in Lot 1, Block 1, Dillon 11th Addition to Wichita, Sedgwick County, Kansas described as follows:

Beginning at a point 75 feet North and 105 feet West of the Southeast corner of said Lot 1; thence West, parallel with the South line of said Lot 1, 25 feet; thence South, parallel with the east line of said Lot 1, 15 feet; thence East, parallel with the South line of Said Lot 1, 25 feet; thence North parallel with the East line of said Lot 1, 15 feet to the point of beginning, located on the northwest corner of 47th Street South and Broadway.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 29, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- C. Therefore, the vacation of a portion of building setback described in the petition should be approved subject to the following condition:
1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 75-foot building setback along the southern property line on the C.U.P to 60 feet.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following condition:

1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 75-foot building setback along the southern property line on the C.U.P to 60 feet.

CARRAHER "Is there anybody here to speak to this item?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

WARNER moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

4/4. VAC2000-00036 - Request to vacate building setback and utility easement, described as:

Vacation of a portion of a 70-foot building setback located in Lots 3 and 4, Block 1, Rockwood Center 2nd Addition to Wichita, Sedgwick County, Kansas, described as follows:

Beginning at a point on the East line and 50 feet South of the Northeast corner of said Lot 3; thence West, parallel with the North line of said Lot 3, 20 feet; thence south, parallel with the East line of said Lot 3, 20 feet; thence east, parallel with the North line of said Lots 3 and 4, 40 feet; thence North parallel with the East line of said Lot 3, 20 feet; thence West, parallel with the North line of said Lot 4, 20 feet to the point of beginning. AND

Vacation of a portion of a 10-foot utility easement common to Lots 3 and 4, Block 1, Rockwood Center 2nd Addition to Wichita, Sedgwick County, Kansas, described as follows:

The North 140 feet of the 10-foot utility easement common to the east line of said Lot 3 and the West line of said Lot 4. Located on the southwest corner of Central and Rock.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 29, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described building setback and utility easement, and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a building setback and utility easement described in the petition should be approved subject to the following condition:
 1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 70-foot building setback along the northern property line on the C.U.P. to 50 feet.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following condition:

1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 70-foot building setback along the northern property line on the C.U.P. to 50 feet.

CARRAHER "Is there anyone here to speak on this item?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

WARNER moved, **GAROFALO** seconded the motion, and it carried unanimously (10-0).

4/5. VAC2000-00037 - Request to vacate utility easement, described as:

The south 10 feet of Lots 6 & 7, Block 1 & the north 10 feet of Lot 2, Block 1, Carriage House Plaza Addition to Wichita, Sedgwick County, Kansas EXCEPT the east 10 feet of said utility easement. Located on the north side of Kellogg Drive, west of Woodchuck Lane.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 29, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement described in the petition should be approved subject to the following condition:
 1. The Applicant shall submit a restrictive covenant that ties together Lots 2, 6 and 7.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following condition:

1. The Applicant shall submit a restrictive covenant that ties together Lots 2, 6 and 7.

CARRAHER "Is there anyone here to speak on this issue? What is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

JOHNSON moved, **WARREN** seconded the motion, and it carried unanimously (10-0).

4/6. VAC2000-00038 - Request to vacate utility easement, described as:

The south 10 feet of Lots 6 & 7, Block 1 & the north 10 feet of Lot 2, Block 1, Carriage House Plaza Addition to Wichita, Sedgwick County, Kansas EXCEPT the east 10 feet of said utility easement. Located on the north side of Kellogg Drive, west of Woodchuck Lane.

NEIL STRAHL, Planning staff, "Ten feet of a 25-foot setback is requested to be vacated along the eastern property line for the construction of a single-family home. The Subdivision Committee did approve this, subject to the applicant maintaining a 25-foot setback on the north line, in addition to coming into an agreement with staff regarding submission of the document to guarantee that this existing site plan would be complied with.

Staff feels that a Restrictive Covenant would be an appropriate document to do so, so we would like for the second condition to read that a Restrictive Covenant shall be provided stating that the property shall be developed in accordance with this particular site plan."

CARRAHER "Are there any questions for staff with regard to this matter? Seeing none, is the applicant here and would he like to speak?"

RUSS EWY "I am with the Baughman Company, agent for the applicant. We are in agreement with staff to revise staff conditions for this."

WARREN "I didn't hear your comments having to do with this site plan having some kind of a guarantee. Did you have that in there?"

STRAHL "We would have a Restrictive Covenant provided by the applicant requiring that that site plan be complied with."

WARREN "Okay."

Osborne-Howes arrived at the meeting at 1:40 p.m.

KROUT "We will check on the language of that Restrictive Covenant also to make sure that it isn't pulled unilaterally by the property owner."

WARREN "And I think a Restrictive Covenant is good as long as you include the County or the City in it and make them party to it. They have to come out of it, too."

KROUT "I think you are right."

CARRAHER "Are there any questions for the applicant? Seeing none, is there anyone in the gallery, either for or against the issue who wishes to speak? I will bring it back to the Commission. What is the pleasure of the Commission?"

MICHAELIS "Just for a point of clarification, Marvin, I would like to ask you if we approve this as presented with a site plan that is attached, and then, for whatever reason, this doesn't go through and this lot becomes available again and is for re-sale, is that covenant still in place on this lot, or does it remain as its original layout?"

KROUT "I would say that the Covenant is in place and maybe the Covenant should be drafted to be sure that the owner only needs to conform with the site plan if there is an encroachment into the setback areas, otherwise, it could be used without having to conform to the site plan."

MICHAELIS "Okay, but I think the only reason we are changing this is for this particular house, and in Subdivision, it was made mention that this particular house may or may not be built there."

KROUT "And if it is not built, then they won't need to vacate the setbacks, is that the question?"

MICHAELIS "That is my question, yeah."

KROUT "I think the wording in the Covenant will take care of that."

MICHAELIS "Okay."

EWY "Yeah, we think we can word the Covenant to tie to this particular site plan, but we have all assurances that this is going to happen in the near future by the end of the year."

CARRAHER "Are there any further questions or commentary with regards to this item?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

GAROFALO moved, **MCKAY** seconded the motion, and it carried unanimously (10-0).

4/7. VAC2000-00039 - Request to vacate a portion of a building setback, described as:

The north 25 feet of the south 140 feet of the 35-foot platted building setback adjacent to Woodchuck, Lot 1, Tyler Acres 3rd Addition, Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Central and Woodchuck.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 29, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described building setback, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a building setback described in the petition should be approved subject to the following conditions:
1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 35-foot building setback along the eastern property line on the C.U.P.
 2. The Applicant shall provide additional landscaping along Woodchuck.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following condition:

1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 35-foot building setback along the eastern property line on the C.U.P.
2. The Applicant shall provide additional landscaping along Woodchuck.

CARRAHER "Is there anybody here to speak either for or against this item? Seeing none, I will move it to the Commission. What is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

WARREN moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

4/8. VAC2000-00040 - Request to vacate alley right-of-way, described as:

That part of the alley as dedicated in Munger's Original Town of Wichita, Sedgwick County, Kansas, lying north of the south line of Lot 86 on Court, (now Main Street) as extended east, and lying south of the south right-of-way line of Oak, (now Murdock Avenue).

- A.
1. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 2. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time August 29, 2000, which was at least 20 days prior to this public hearing.
 3. That no private rights will be injured or endangered by the vacation of the above-described building setback, and the public will suffer no loss or inconvenience thereby.
 4. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a building setback described in the petition should be approved subject to the following conditions:
1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 35-foot building setback along the eastern property line on the C.U.P.

2. The Applicant shall provide additional landscaping along Woodchuck.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following condition:

1. The Applicant shall submit an Administrative C.U.P. Adjustment to reduce a portion of the 35-foot building setback along the eastern property line on the C.U.P.
2. The Applicant shall provide additional landscaping along Woodchuck.

NEIL STRAHL, Planning Staff "This is a request to vacate an alley right-of-way for a future development for the Wichita Area Builders' Association. The Subdivision Committee recommended approval of the vacation, subject to the applicant providing a public access easement through the southeastern portion of the site that would allow for continuation of the alley eastward to Market Street. Staff is also asking for a guarantee to close the existing alley return. We also need the vacated alley to be retained as utility easement since there are utilities located currently in the alley. Are there any questions for staff?"

CARRAHER "Are there any questions for staff? Thank you. Would the applicant like to speak?"

PHIL MEYER "I am with the Baughman Company, agent for the applicant. With me here also today is Wess Galyon with the Wichita Area Builders' Association. He will be glad to answer any questions you may have. What I have passed around to you was a site plan for the proposed re-development of this site. What we are asking to do is to vacate the north approximately one-third of this alley, and after we vacate that alley, we are offering an access easement, which is shown on the site plan and a hatching that would allow the existing alley to exit out to the east over to Market Street. This alley presently is a two-way alley which carries traffic in both directions.

This access easement we are offering, I am going to word it as a temporary access easement. We are going to draft that so it remains in place as long as the alley exists to the south. I think the long-term plan is to come in and vacate the rest of the alley. This is a temporary solution to letting us finish up the site plan for the Builders' Association. So the easement will remain in effect until the rest of the alley is vacated and will always allow access through the property out to Market Street. With that, I will be glad to answer any questions. I have a little packet of information here that shows a rendered site plan and building elevations and pictures of the alley. I don't plan on passing those out unless one of the Planning Commissioners wants to see it. I've got that information available."

GAROFALO "I just want to know about the alley. Is it going to have access onto Market?"

MEYER "Yes, sir."

GAROFALO "That access easement?"

MEYER "That access easement will allow all traffic in the alley."

GAROFALO "What about the parking lot?"

MEYER "That access is going through the parking lot. It is the driving lane in the parking lot."

GAROFALO "So that will be just the one access on Market."

MEYER "The one access for the alley...yes."

GAROFALO "And for the parking lot."

MEYER "Yes. There is access on the alley at the south end. That will be the only access opening we have to Market is that one opening. We are closing the rest of the drives."

CARRAHER "Are there any further questions for the applicant? Mr. Galyon, are you wanting to add any words with regards to this matter?"

WESS GALYON "I will make a few brief remarks. I am basically here today for questions. For your information, we were in the process of moving forward to tear down the current buildings that we own at 726, 728 and 730 North Market and in its place we are going to erect an approximately 8500 square foot new brick facility there.

We have already located our offices, and our primary motivation for seeking this alley vacation is so that we will have a little better control in terms of access to our site, and also to allow us to do some buffering between our property and the property to the south, and block it from view, if you will, to the extent that it is reasonably possible to do that. It is a little unsightly, so that is one of the reasons we are asking to do this. There is a little bit of a safety problem having the traffic go northwest through that alley. We are building currently right up to the alleyway or the easement if you want to refer to it as that, and we have had some people nearly get hit with cars coming through there, so this will remedy that problem pretty directly, as well. We are not planning to encroach into the easement, but our property will go up to that alleyway

that we are asking to be vacated. We will have some improvements out in it, but not to the extent that it would interfere with any utilities or anything that might be in that easement area."

CARRAHER "Are there anyone in the gallery wishing to speak in favor of the issue? Seeing none, is there anyone in the gallery who wishes to speak in opposition to the issue?"

SAM LUINSTRA "I own and operate Neil Hardware at 722 North Main. The vacation of this alley comes to the edge of my property line. I don't know how I am going to get off of Murdock into our property to service the people that call on us on the back door. We probably do as much business out of our back door as we do the front door.

We have been at that store for 52 years and then this comes up and you are going to take part of my business away from me. The only way that any business can form would be the convenience of having access to my business. I don't know how you are going to get a garbage truck and the big semi trucks and etc., that comes up through and down that alley and make them go in that easeway.

I very definitely object to the vacation of this alley. In fact, I almost demand that it not be vacated. Please remember, I am not against the builders. I suppose you need to know because I heard him say just now a future date to vacate the whole alley. That is fine. I have in my hand here a letter from an attorney with an option to buy my property. That is fine if they want to buy my property, then they can go ahead and vacate the alley. But until they come across and buy my property, I have to have the in and out of that alley, if you please. I have 100 foot, four properties on Main Street and I have three properties almost directly across the alley on Market Street. It is going to put something there that will be hard for me to bear.

Also, we have a tenant at one of our properties there, and I would say that the back alley door is his main door, and I can see maybe 15 people come to that back door every day. How are they going to get in and out? If you please, do not vacate this alley."

CARRAHER "Are there any questions for the speaker? Thank you. Is there anyone else in the gallery wishing to speak in opposition? Yes, sir."

EMORY GOAD "I have a business at 724 North Main, which would be on the immediate property line south of this improvement. I was never advised of today's hearing. Do you customarily advise tenants?"

KROUT "No, just property owners."

GOAD "Just property owners, okay. My office faces the parking lot at the alley of the building split in the middle. We don't enter or exit from Main Street.

This would cause a hardship to my business, I know. I am a tenant of Mr. Luinstra. I hadn't heard what I heard the last part of here today, and I am not sure of the details, but running that alley through their parking lot would make we wonder then where the parking lot is going to be because that takes up a third of the existing parking lot. In any case, I am opposed, and I wasn't given any material or anything about it today. Our only door faces there, so we would have people parking somewhere, probably walking in this new alleyway coming back and forth to our door. Questions?"

CARRAHER "Are there any questions for the speaker?"

WARREN "Do I understand that you would have some restriction that you do not have now, or is it just a re-routing of traffic?"

GOAD "It would appear to be some restrictions, but nobody has ever told me the details and there has been so much mystery about this entire development, I mean total mystery. People are afraid to talk, or won't talk, and we don't know what is going to happen, so I can't really answer your question."

WARREN (Holding up site plan) "Have you seen this?"

GOAD "No, sir. They don't want to share any information with anybody south of their improvement. I guess it is a secret. We tried to interview people this morning on properties that are lined up to be a part of this on Market Street, and they don't want to talk either. I made an effort for about a week, and I am licensed Private Investigator. I made an effort to try to find out what is going on and everybody wants to clam up because the Homebuilders' told them not to say anything. We don't know what is about to happen in this block. There are too many secrets."

WARREN "We have public meetings."

KROUT "Did you contact the Planning Department?"

GOAD "Did I? No, sir."

KROUT "Because we would have been glad to share the information we had with you."

GOAD "I don't think you know half of what they have planned."

KROUT "Well, I hope it is twice as much as I have seen so far." (Laughter here).

WARREN "I was just going to comment on what Mr. Krout was just saying. We had a public meeting here last Thursday and it was attended by a number of people, and we discussed this whole project. It hasn't been anything of secret."

GOAD "I am talking about for my purposes. And there are people who are involved, and there are apparently some spin-offs here. I am not saying that anything else that is going to happen is bad, I am just saying I am apprehensive for lack of understanding."

CARRAHER "Are there any further questions for the speaker? Thank you. Is there anyone else here to speak in opposition to the issue? Seeing none, I will move it back to the Commission."

MARNELL "I would like to ask Mr. Galyon a question, if he would come to the podium. You heard the prior speaker say that there was some kind of secret in this and you are asking people to be quiet on this. Would you like to comment on that?"

GALYON "I don't know how they surmised that. The only property we are asking the alley to be vacated behind is our property to our south property line that fronts on Main Street. We bought a small parcel of property immediately south of our existing building and the site plan shows that. It is so we can actually have parking on the south side where people can pull in off Main and pull into there. That is one way south.

The purpose of our asking for that vacation is so we can limit traffic access onto our site that we own. It is a two-way alley, access is available from the south and we are agreeable to give an easement from the alley where it comes up to the south of our property line, east across the southern part of our property to Market Street.

There is no secret about what we are doing. The building has been designed, it has been through plan review. Obviously we are going through the process that we need to to request and hopefully gain approval to have that alley vacated. There is some discussion going on on the part of some people. I don't know who those people are that are looking at maybe buying some property, the property south of us. Mr. Luinstra has already presented evidence to that extent by virtue of the fact that he has entered into an option agreement to sell his property to some individuals. I am not one of those individuals. Our association is not an investor in that property south of us, nor do we intend to be. Frankly, we would like to see somebody buy it and clean it up, but that is not what we are about. We don't think this impairs the usability of the property or anything else and we would certainly hope that you would support our application."

CARRAHER "Before we entertain any more questions, I made a mistake and skipped a procedure. I did not give the applicant an opportunity to have a rebuttal. Would you like to have that opportunity now?"

MEYER "Just briefly, part of the reason for asking for this vacation is the re-development of this site. There are a lot of positives that come out of the re-development of this site. We are closing a lot of the driveways that exist. There are a lot of small curb cuts along Market that we will be closing. We are consolidating our access to one point to each street, rather than a multitude of points right now.

The existing alley that goes up to Murdock now will be closed and that access is not available, but we are still allowing the landowners access out to the east, so their property, with the alley being a two-way access. That is kind of why I mentioned that earlier. They still have access in and out of that property. A lot of the alleys in the downtown area are not too wide. They are one-way. That has more of a detrimental impact. Being a two-way alley, you can easily come down to Main, turn on Pine, come up the alley and come up Murdock and turn into the Wichita Area Builders' Association, come back to the alley. There is still plenty of good access to this alley.

The alley is being maintained as a utility easement so the utilities can still go through the alley that are there. As far as the redevelopment of a piece of downtown property, vacating this alley will be a positive thing for this redevelopment. We don't think we are adversely impacting anybody south of us. We are still allowing them access. They still have the same space behind their building to get in and out of their building as they did before. We are not impacting their present operation."

MARNELL "Will the radiuses on the turn from the alley into that easement allow for semis that would answer Mr. Luinstra's questions on access?"

MEYER "We showed this to Traffic Engineering, and as long as we don't block off that end stall right there, they were comfortable with the trucks being able to turn through there. The main concern the Traffic Department has is trash vehicles being able to turn in and out of there."

MARNELL "And that is big enough for them to make it?"

MEYER "Yes, sir."

MARNELL "Thank you."

JOHNSON "Phil, how wide is that easement, or that agreement?"

MEYER "It will be 24-foot wide. The existing alley is 20 foot. Their access out through the parking lot would be 24 foot."

JOHNSON "Is there anyway to make it a little bit wider?"

MEYER "Not without impacting the number of parking stalls we have on site, or not without removing landscape islands. Neither of which we would care to do. Could we make it wider? Yes. But it is going to have an adverse impact on our site plan."

JOHNSON "Do you know how far the parking is off of the property line to the south? There appears to be a strip of ground there."

MEYER "I am guessing...that looks to be 5 to 6 foot wide in comparison to the rest of the dimensions."

JOHNSON "Now, is that a landscape strip there?"

MEYER "Yes, a buffer strip. We want to do some good landscaping for downtown. That is why we hate to take out the parking island."

OSBORNE-HOWES "I am still sitting here trying to imagine a trash truck or a large truck making that turn. Maybe it is possible. My other question is did you contact or share this with any of the tenants or people who are located south so that they could understand it?"

MEYER "I personally have not. Last week, at Subdivision, there were two people that opposed this. Mr. Luinstra was one of them. There was also a lady down at the very far corner that was opposed to it. I spent some time talking to her after the Subdivision meeting and showing it to her and explaining it to her. I don't believe she showed up today. I think I answered her questions. I will be glad to meet with Mr. Goad out in the hallway and show him what we are doing. I will be glad to talk to him. We have not kept anything a secret from anybody. We will be glad to show him."

CARRAHER "Are there any further questions for the applicant? Thank you."

OSBORNE-HOWES "I do have a question for staff. Is there a precedent set for vacating alleys in downtown Wichita?"

KROUT "Yes. We have done that many times and the most recent example that I can point to where I have done something similar to this with an access easement through a parking lot is for USD 259 for the school that is down on south Broadway. The school was being sold to a private individual who was redeveloping the school and wanted to expand into the southern portion of the alley and also agreed to provide similar 'L' access with an access easement through a parking lot."

OSBORNE-HOWES "And has that worked out okay?"

KROUT "Yes."

GAROFALO "I guess I am just wondering....I am not saying necessarily that this shouldn't happen, but we are closing an alley there and there are property owners to the south, at least one that is speaking out in opposition. I was wondering whether, if this is such an important alleyway, and if there is a lot of traffic up and down there, deliveries and what not, I was wondering if something like this shouldn't be looked at by the District Advisory Board for that district. It is just a thought. It seems like an important alleyway."

KROUT "It would be the pleasure of the Planning Commission. Our policy has been that when we thought there was a larger neighborhood impact as a result of vacating a street or alley, we would take it to the District Advisory Board or the C.P.O. before that. But when it was dealing only with the property in the single block, which I think this is, they are the only ones who are affected, that it is not having a wider neighborhood impact, so it can be handled by the Planning Commission."

OSBORNE-HOWES "This seems like a viable concept. I guess my only comment is that it would just make so much more sense if the entities involved shared this information with people who might be affected. In particular, the applicant and the agent have set through numerous meetings where we have talked about businesses and neighborhoods and the need for them to be informed. I am just really disappointed that that effort hasn't been made in this case. Maybe they would like to respond to that."

MEYER "I would. I think it is key for you to know, and I guess I said this at Subdivision, but I didn't say it today, but we tried to vacate the entire alley. We could not obtain all of those signatures. Mr. Luinstra's signature was one of them that we could not obtain. The other thing, and I know this is a battle that we can't solve here at the Planning Commission, but we are in disagreement with the amount of traffic they are saying is going up and down that alley today. We are on that alleyway quite a bit and we just don't feel that there is quite as much traffic going up that alleyway as they are describing to you."

That is one of the reasons, and we have several, but that is one of the reasons we don't think we are adversely impacting the people to the south. There is traffic on that alleyway, I am not going to tell you that there is not, but it is not a heavy amount of traffic that goes up and down that alleyway."

JOHNSON "The downtown area where you are seeing some re-development, which I think is a key, yeah there are going to have to be some people who are going to have to give a little bit. But I have a feeling that between traffic and the Fire Department, they have looked at this plan and determined that they can get a fire truck through there. If they can get a fire truck through there, I would think they could get a trash truck or whatever through there.

Yeah, I wish it was a little wider. It can't be. I would like to see maybe one or two of those parking spaces maybe not be there where you could get a good radius there, where somebody could get a truck out of there. And of course, the last thing is, probably when the downtown was developed and laid out with the alley, it wasn't used to the type of equipment they deliver with that they are driving today. So it is not a good thing no matter what we do.

But I have to support the redevelop because I want to see the downtown have some redevelopment."

GAROFALO "Can I ask the applicant what Commissioner Johnson is suggesting, to do some sort of a little compromise, to eliminate one or two of those spaces so that you could definitely get in and out?"

MEYER "I don't know if I can eliminate any spaces on parking code. We would be glad to look into that. We can probably make that drive wider, moving the curb line to the south. That is going to impact the landscape buffer, so there is a give and take there. We would be glad to widen that out, but it will impact the buffer we are giving."

JOHNSON "That is kind of what I was looking at before, even if you didn't eliminate all of it. If you just took a foot or two out of it there and maybe a foot or two out of that island, you would have 28 or 29 foot of drive, which is almost as wide as a city street that they are driving trucks down now."

MEYER "I think we can do that. Wess was telling me we are at parking Code, so we can't give up parking stalls."

JOHNSON "Well, then we don't want to."

MEYER "We can add probably 3 or 4 feet to that drive and widen that thing out. That will help."

JOHNSON "That would be a good solution."

CARRAHER "Are there any further questions or commentary by the Commission? What is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

MARNELL moved, **HENTZEN** seconded the motion.

OSBORNE-HOWES "I just want to make sure that the motion included what the applicant just offered?"

MARNELL "Yes, it did."

CARRAHER "Does the second concur?"

HENTZEN "Yes."

CARRAHER "Any further questions or commentary regarding the motion? Seeing none, we will move to a voice vote."

VOTE ON THE MOTION: The motion carried with 12 votes in favor. There was no opposition. McKay abstained.

KROUT "Let me just explain to the people who were here that the City Council has the final decision on this case, but they will not have a public hearing. They will rely on the testimony in the minutes. The Planning Commission has the official public hearing. This will be sent to the City Council for a final decision, but there will not be a public hearing at the City Council."

CHRIS CARRAHER, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

ZONING:

5. **Case No. ZON2000-00036** - Ernest A. and Doris Irene Jordan (Owner/Applicant); Stephen m. Jordan (Agent) request a zone change from "SF-6" Single-Family residential to "NR" Neighborhood Retail and "TF-3" Two-Family Residential on property described as:

Lots 1-10, inclusive, Block D, West Maple Gardens Addition, Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Taft and Julia.

SCOTT KNEBEL, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "SF-6" Single-Family Residential to "NR" Neighborhood Retail and "TF-3" Two-Family Residential on a 3.7 acre platted tract located at the northwest corner of Taft and Julia. The applicant proposes to develop the site's Julia frontage (2.4 acres) with a commercial center of approximately 20-25,000 square feet and the site's Brummet frontage (1.3 acres) with approximately five duplexes (10 dwelling units).

The surrounding area is characterized by large-scale commercial development south of Taft and single-family residential development north of Taft. The property west of the site across Brummet is zoned "SF-6" Single-Family Residential and is developed with single-family residences. The property north of the site across University right-of-way (street not constructed) is zoned "SF-6" Single-Family Residential and is undeveloped. The property east of the site across Julia is zoned "SF-6" Single Family Residential and is developed with two single-family residences and three vacant residential lots. The property south of the site across Taft is zoned "GC" General Commercial and is developed with a Wal-Mart.

The surrounding area also is characterized by its proximity to the Mid-Continent Airport. The subject property is located under the approach to Mid-Continent Airport approximately one mile north of the end of the runway. Due to its location, the site is subjected to significant noise from aircraft.

CASE HISTORY: The site is in the West Maple Gardens Addition, which was recorded February 1, 1956. An application for "LC" Limited Commercial zoning (Z-3317) on the entire subject property was submitted by the applicant on February 22, 1999 and was subsequently withdrawn prior to hearing by the MAPC.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Undeveloped
SOUTH: "GC" Retail, General
EAST: "SF-6" Single-Family
WEST: "SF-6" Single-Family

PUBLIC SERVICES: The site has access to Taft, Julia, Brummet, and University. University is right-of-way only, and the street has not been constructed. The applicant has indicated that University may become a cul-de-sac off Brummet through the replatting process. Brummet is an unpaved local street. Planning staff recommends requiring Brummet to paved as a condition of replatting. Taft is a four-lane collector street with traffic volumes of approximately 10,500 vehicles per day. Julia is a two-lane collector street with traffic volumes of approximately 8,500 vehicles per day. The 2030 Transportation Plan does not estimate future traffic volumes for Taft or Julia. As proposed, the commercial center would generate approximately 850-1,075 additional vehicles per day. Planning staff recommends requiring additional right-of-

way, access controls, and turn lanes on Taft and/or Julia, as appropriate, as a condition of replatting. Public water and sewer service are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Low Density Residential category provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units.

The Commercial Locational Guidelines indicate that commercial convenience centers ranging in size from 2-4 acres are typically expected to develop at one or more corners of arterial intersections and may be appropriately located at the intersection of an arterial and a collector street, where proper turn lanes are in place or planned. The subject property is located at the intersection of two collector streets with traffic volumes approaching those of an arterial street.

The Residential Locational Guidelines indicate that medium-density residential uses may serve to buffer low-density residential uses from commercial uses. The proposed duplexes would serve to buffer the low-density residential uses to the west from the proposed commercial center.

The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, that maximizes the public investment in existing and planned facilities and services. The objective is intended to be achieved through the following strategy: use Community Unit Plans, Planned Development Districts, and zoning as tools to promote mixed use development, higher density residential environments, and appropriate buffering.

RECOMMENDATION: Based upon numerous factors, planning staff finds the subject property appropriate for neighborhood retail and medium-density residential uses. First, the high traffic on Taft and Julia and the site's proximity to a regional commercial center make it unlikely that single-family residences will develop on the subject property. Second, the site is significantly impacted by noise from Mid-Continent Airport, which further reduces the likelihood that the site will develop with single-family residences. Third, the owners of the nearby properties along Julia are actively marketing their properties as commercial properties even though they are zoned residential, thus indicating a market realization that the Julia corridor between Taft and Maple is appropriate for commercial development. Fourth, the proposed rezoning provides a step-down in zoning to buffer the existing single-family residences to the west from the commercial development proposed along Julia. Fifth, the proposed residential use is of a density (7.5 units per acre) that is slightly greater than the density (7.25 units per acre) that would be permitted by leaving the property in the "SF-6" district and replatting the property into smaller lots. Sixth, the Comprehensive Plan indicates that commercial convenience centers are appropriate for high traffic intersections if proper turn lanes are provided. Based upon these factors and information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to replatting within one year, with consideration given to sufficient right-of-way dedication, access controls, and traffic improvements.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by large-scale commercial development south of Taft and single-family residential development north of Taft. The property west of the site across Brummet is zoned "SF-6" Single-Family Residential and is developed with single-family residences. The property north of the site across University right-of-way (street not constructed) is zoned "SF-6" Single-Family Residential and is undeveloped. The property east of the site across Julia is zoned "SF-6" Single Family Residential and is developed with two single-family residences and three vacant residential lots. The property south of the site across Taft is zoned "GC" General Commercial and is developed with a Wal-Mart.

The surrounding area also is characterized by its proximity to the Mid-Continent Airport. The subject property is located under the approach to Mid-Continent Airport approximately one mile north of the end of the runway. Due to its location, the site is subjected to significant noise from aircraft.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density single-family residential development and complementary land uses. Given the site's location along high-traffic streets, near a regional commercial center, and under the approach to an airport, it is unlikely that the site will develop with single-family residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the step-down in zoning, which provides a buffer from the commercial development along in the form of duplexes with a similar density to single-family lots.
4. Length of time the subject property has remained vacant as zoned: The subject property was platted into single-family residential lots in 1956 and has yet to develop with single-family residential units.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Although the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development, the Commercial Locational Guidelines indicated that commercial convenience centers ranging in size from 2-4 acres may be appropriately located at the intersection of an

arterial and a collector street, where proper turn lanes are in place or planned. The subject property meets these criteria since it is located at the intersection of two collector streets with traffic volumes approaching those of an arterial street.

The Residential Locational Guidelines indicate that medium-density residential uses may serve to buffer low-density residential uses from commercial uses. The proposed duplexes would serve to buffer the low-density residential uses to the west from the proposed commercial center.

The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill, and higher density residential development, that maximizes the public investment in existing and planned facilities and services. The objective is intended to be achieved through the following strategy: use Community Unit Plans, Planned Development Districts, and zoning as tools to promote mixed use development, higher density residential environments, and appropriate buffering. The proposed use of the of the subject property is a mixed-use, higher-density infill development with appropriate buffers from existing single-family residences.

6. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted as long as sufficient right-of-way, access controls, and traffic improvements are provided for through the replatting process.

KNEBEL "The applicant has requested to change the eastern portion of this property to Neighborhood Retail and the western portion of the property to 'TF-3' Two-family residential. The size of those two parcels would be 2.4 acres for Neighborhood Retail and 1.3 acres for 'TF-3'. The site is currently undeveloped. It has been platted for over 40 years and has never developed. It is primarily a residential area, north of Taft and a commercial area south of Taft.

This area is also in close proximity to Mid-Continent Airport. The subject property is under the approach of the east runway and is located approximately one mile north of the end of that runway. The site has access to three existing streets and the right-of-way of a fourth street. As you can see, University Street as shown, is platted through this area. It has not been constructed, so at this point, it is just right-of-way only. The remaining streets, Taft and Julia are both collectors. Taft is four lanes and Julia is two laned. Brummet is an unpaved local street; it is shown as being platted with through traffic to Taft, but actually none of the north/south streets there go through any longer. They all dead-end at Taft.

The commercial center that is proposed would be approximately 20,000 to 25,000 square feet and would generate approximately 850 to 1,075 additional vehicles per day. The vehicle counts on Taft and Julia today are in the neighborhood of some of the arterial streets that we have. Therefore, staff is recommending that as a condition of platting that the access controls and turn lanes as appropriate be looked at when this property is replatted as a condition of the approval of the zoning.

The Comprehensive Plan shows this site as appropriate for low-density residential development, which is how it has been platted, as I mentioned previously, for over 40 years, nearly 50 years now. It has yet to develop. The Commercial locational guidelines, if you look at those in the Comprehensive Plan, indicate that the commercial properties are appropriate for the arterial intersections, or the intersections of arterials and collectors. We feel that the traffic counts on Taft and Julia make this locational criteria applicable, given the fact that you have over 10,000 vehicles and are approaching 10,000 vehicles on the other street.

The applicant has also proposed a buffer of the commercial property with duplex zoning on Brummet Street. That is another one of the guidelines that is in the Comprehensive Plan that states that commercial uses should be buffered from low-density residential uses with other types of uses, be it multi-family or office. There are numerous factors that the Planning staff used in coming up with a recommendation for approval. One that I mentioned previously was the high traffic counts on Taft and Julia make it unlikely, especially along Julia that the properties that are fronting that street would develop as single-family residences. In addition to that, the site is significantly impacted by Mid-Continent Airport and the noise that is generated from that, again making it less-likely that residential uses of the entire site would be occurring anytime in the near future.

The owners of the property that is located here (indicating), here and here have marketed it in the past as commercial property. As you can see, it is currently zoned residential. We think that indicates that there is at least some realization from the property owners in the area that the frontage there along Julia is appropriate for commercial development. You have a letter that you received today that was handed out, from one of those property-owners that indicates that same point.

The proposed zoning, as I mentioned before, provides a step-down as a buffer between the commercial development along Julia and the residential development along Brummet. The residential development that is proposed, while it is duplex zoning, is proposed at a very similar density than what would be permitted under the current zoning today, were the site to be replatted into smaller lots.

Finally, the Comprehensive Plan indicates that the type of commercial convenience center that is proposed is appropriate for intersections, as long as there is appropriate turn lanes provided. Based on these factors, the Planning staff has recommended approval, subject to replatting. We have added the caveat in there that consideration should be given to providing sufficient right-of-way, access controls and traffic improvements at the time of platting. With that I will conclude and stand for questions. Oh, there is one point that I should mention. You also received, at your table today, an item

from the District Advisory Board from District V indicating that they had heard this case and had voted 8-1 to approve. There are also indications there of the comments provided by citizens at that meeting."

CARRAHER "Are there any questions of staff? I see none. Would the applicant like to speak?"

Barfield arrived at the meeting at 2:17 p.m.

STEVE JORDAN "I live at 1237 Lulu in Wichita. I am representing my Father and Mother, who are the property owners. My Mother is ill. I would like to submit, if you will, a zoning application that was made in March of 1999. It was Case No. Z-3317. This request was originally submitted for Light Commercial zoning. We felt it was the best use for the property. We had had it on the market for several years with J.P. Weigand, with Chuck Lambertz, and we found it difficult to sell the property as zoned. In fact we didn't have any good offers.

The pictures that Scott showed earlier depicted the property that is zoned Single-Family, but that they are asking for Commercial zoning for, so we felt it appropriate for Light Commercial. Approximately a year later, we were given notice that we must move forward with this application. We had discussed things with MAPC. We felt, at that time, that it would be best to downgrade to 'NR' and a combination of the multi-family duplex. The reason was that we felt that it was apparent that we would get opposition from both residents and the MAPC for 'LC' zoning. Just a couple of weeks ago, we met with the District Advisory Board, and as a result of that meeting, it was clearly shown that I was incorrect. We had four landowners show up that opposed duplex zoning. Instead, they were in favor of commercial zoning. They wanted to see a wall put down on our property to divide them from that commercial zoning. They also insisted that any additional home building dwellings built on Brummet Street would increase a traffic problem that is already in existence. They talked about difficulty in getting out onto Maple Street from Brummet Street, and they were pretty adamant about having 10 more families, or even 5 more families making the same attempts.

I know we are here to suggest 'NR', and the duplex zoning, but I wanted to show you that it was our plan initially to zone this Limited Commercial. It appears that the current citizens want commercial instead of the proposal put before you. At the time I lowered our request from 'LC' to the proposed, I had asked the MAPD to refund my Dad \$200 because there is a difference in fee schedule. I would gladly pay the \$200 to have the appropriate fee paid for the 'LC' zoning that I did ask for. I would like to ask you to vote for the citizen's wishes on this matter and the landowner's wishes and approve 'LC' zoning.

Last I would say that if we chose to rule again today in favor of the proposal in front of you, then I ask the Commission to waive the fees for a re-application to 'LC' which will be submitted. Are there any questions?"

CARRAHER "Are there any questions for the applicant? Okay, thank you. Is there anybody in the gallery who wishes to speak in favor of this issue? Seeing none, are there any members of the gallery who are in opposition to this issue? Okay, we will bring it back to the Commission."

HENTZEN "Marvin, do you think that the property north of there that empties up to Maple is going to be requested to be commercial?"

KROUT "We haven't had any inquiries, but probably at some point in the future, yes. Some type of non-residential."

HENTZEN "On the east side of this corridor there are a few houses between there and Maple. Not very many. But there is also some empty property. Since we have closed all of the streets west of Julia down to Taft, it made Julia really an arterial street. There are a lot cars coming into Julia going west on Taft and then getting into those businesses down west. I think it is even going to increase because there is a new hotel built there and a new furniture building. A brand-new big installation on the east side of the Julia area. So what I am thinking about is that if this applicant wants to apply for Light Commercial, as opposed to what has been asked for today, that we should reject this request and ask him to go ahead and apply for the Light Commercial.

I have no problem with voting for the request today that gives him some commercial on Julia with the duplexes on the back of the lot, but it just appears to me that that whole street up to Maple, if it be properly divided by one of these nice masonry walls, would be appropriate all the way up to Maple. I am just prepared to vote for the request, but I don't think that the residential will ever expand on Julia Street on the west side or the east side. So lets try to do something that would make it interesting to an investor to put some commercial in there."

CARRAHER "Are there any other questions or commentary on the issue?"

JOHNSON "Marvin, what are our options on something like that?"

KROUT "You can't approve a more intense zoning category than what has been applied for or advertised. I think that you could direct the staff to re-advertise this tract for 'LC' zoning. You don't have the authority to waive fees, and I think because we would be doing a new advertising and new notice that we ought to collect the difference in the fees to help pay for that anyway, but I think that if you feel that 'LC' may be an appropriate category for the entire acreage, you could direct us to go through a re-advertisement. We would send new notices out and then about 6 weeks from now, we probably would be back, talking about 'LC' zoning for the entire tract. I am not suggesting necessarily that staff would recommend that, but you could certainly do that."

JOHNSON "Who, from staff, was at this D.A.B. meeting?"

KNEBEL "I was there."

JOHNSON "It appears that the neighbors were not in favor of the duplex zoning."

KNEBEL "That was quite clear in their comments that at least the four people who came would be more interested in seeing commercial rather than duplexes."

GAROFALO "I want to ask the applicant a question. Will you take the podium? Clarify for me, you would rather have Light Commercial on the whole site?"

JORDAN "Yes. For several reasons."

GAROFALO "Okay. I think I got the reasons. That is all I wanted to clear up. You aren't wanting the duplex zoning on the west side."

JORDAN "I guess clarification is in order. We felt we were bowing to pressures to go with 'NR' and duplex zoning, so we acquiesced and went from 'LC' to the other. We always wanted 'LC' and felt that this street deserved that kind of zoning, or would benefit from that type of zoning.

The reason for the change is a little more complex. If we are going to have additional street right-of-way dedication, and I am working under the plan before you, that takes away from a 174 foot lot, precious frontage for both landscape and the street-right-of-way. So with the neighborhood opinions being voiced, with the compounding issues, we feel that the entire plot is best served in the 'LC' zoning. I would accept the current zoning if I can't get the waiver of fees because it wouldn't make much sense to come out of this meeting room without anything. So if we vote in favor of the current plan before you today, then I guess it is up to me to pay a new fee and re-submit it for 'LC', which I could decide at a later date."

WARREN "Just a couple of points for clarification. He was never denied Limited Commercial, he just simply didn't go ahead with that 1999 application. Is that correct?"

KROUT "Right."

WARREN "So now I guess we either have to act on this...we can't do anything other than act on this request or can we defer it to another point?"

KROUT "You could act to approve what he has requested; you could act to approve Neighborhood Retail and Single-Family zoning on the back if you think duplexes is not what the neighborhood wants and you have a concern about that. My other suggestion was that you could direct a re-hearing and we would collect the \$200 for the larger area and the change to 'LC' zoning and then do a re-advertisement and notification. But I do hear the applicant saying that he doesn't want to pay that additional fee."

JORDAN "Excuse me, Marvin, if the \$200 is acceptable to the upgrade instead of a new \$850 fee, then I would be glad to submit that."

KROUT "Sure. We would do that."

MOTION: That the item be deferred, and that the applicant pay the difference between what has been paid and a request for Light Commercial.

JOHNSON moved, **WARNER** seconded the motion.

KROUT "We will have to calculate it, but whatever the difference is between what has been paid and what the fee would be for 'LC' on this tract, and then we will re-advertise it and go to the District Advisory Board again."

GAROFALO "Just a point of order, I guess. Since this is a public hearing, don't we have to ask if there is anyone here to speak one way or the other?"

CARRAHER "We already did."

OSBORNE-HOWES "I heard staff say that they may not support that if it comes to that. You are the ones that initially talked to him about Neighborhood Retail as opposed to Light Commercial, is that right?"

KROUT "That's right, but we may come back to you and recommend Neighborhood Retail on the whole acreage instead of Limited Commercial and then your option is to approve anything from 'LC' down. This just gives you more options."

OSBORNE-HOWES "Okay, thanks."

PLATT "I just want to make it clear that while I am prepared to support the request today, I have some concerns about approving 'LC' zoning on the west side of the site, which seems to me is moving into a residential neighborhood. The

fact that there were four people who wanted the whole thing commercial, I don't think has anything to do what might happen if a hearing were advertised to turn that side of the side into a commercial activity. We could have an entirely different approach then if we are going to have commercial all along Brummet. Right now I would be strongly opposed to commercial activity along Brummet. I think that would be defeating the whole purpose of trying to screen residential neighborhoods from commercial activity. So I have no objection to postponing, but I certainly don't want people to think that I am going to support 'LC' zoning in that whole area."

WARREN "For clarification, Marvin. If we come back with a new application for Limited Commercial, we could, then opt to downgrade that to 'NR' without any other applications?"

KROUT "Yes. You could go 'NR' and Single-Family; or 'NR' and duplex."

HENTZEN "Now, what is the motion? I couldn't hear it very well."

JOHNSON "It's to defer it and re-advertise it for 'LC' Limited Commercial zoning and that he pay the fee for an 'LC' application in lieu of what he has already paid...the difference."

HENTZEN "What is the time frame on that? How long will the staff need to process that?"

KROUT "Four to six weeks. To the next Planning Commission hearing. We have a notice list that is probably up-to-date, so we will just have to look at the next agenda."

HENTZEN "Okay."

CARRAHER "Are there any further questions or comments regarding the motion? If not, we will move to a voice vote."

VOTE ON THE MOTION: The motion carried with 13 votes in favor. There was no opposition.

6. **Case No. ZON3000-00035** - Andy P. Stephens and Robert C. Nelson (owners and contract purchasers); Edward E. and Wanda L. Boyles (owners); PEC c/o Rob Hartman (agent) request a zone change from "SF-6" Single-Family to "NR" Neighborhood Retail on property described as:

We hereby certify the foregoing to be a true and correct list of the property owners of the hereinbefore described tracts and lots within a 200 foot radius of:

A tract in the Northeast Quarter of Section 20, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point in the East line of said Section 20, 1173 feet North of the Southeast corner of said Northeast Quarter; thence West parallel with the South line of said Northeast Quarter, a distance of 230 feet; thence South 94.7 feet; thence East 230 feet to a point in the East line of said Northeast Quarter; thence North 94.7 feet to the point of beginning. The East 40 feet thereof being reserved for road purposes.

and

A tract in the Northeast Quarter of Section 20, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point in the East line of said Section 20, 983.6 feet North of the Southeast Corner of the Northeast Quarter of said Section 20; thence West parallel with the South line of the Northeast Quarter of said Section 20, a distance of 230 feet; thence North 94.7 feet; thence East 230 feet to a point in the East line of said Section 20; thence South 94.7' to beginning, the East 40 feet of said tract reserved for road purposes. Generally located on the west side of Tyler Road approximately 1/3 mile south of Central.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicants are requesting "NR" Neighborhood Retail on two unplatted tracts of land located on the west side of Tyler Road approximately 1/3 mile south of Central. Each tract is 17,993 square feet in size. Combined, the application area is 0.83 acre. The applicants, Robert C. Nelson and Andy P. Stephens, own the southern tract and have a contract to purchase the northern tract. They have indicated they would like to construct a medical office on the southern tract and a retail optical outlet on the northern tract.

The applicants originally requested "NR" for the entire application area. However, the building being planned for the southern tract is approximately 5,000 square feet on the main level, with a 5,000 square foot basement. This would be 10,000 square feet of gross floor area, which would exceed the size limitation of 8,000 square feet for a single commercial use in "NR." Therefore, they have changed their request to "GO" General Office for the southern tract in order to accommodate the larger building size. This revision can be incorporated into this application since "GO" is a less intensive zoning district than "NR." However, there may be other limitations that restrict the size of the building. These would include compatibility setbacks along the south property line, landscaping along Tyler Road and the south property

line, and parking requirements. Also, additional dedication of right-of-way on Tyler would be anticipated at the time of platting, which would further limit the size of the tracts.

The property is located immediately south of the entrance to Westlink Village Apartments, which is part of DP-9, Westlink Center. Most of the property north of the apartment complex entrance is zoned "LC" Limited Commercial, including an AutoZone and the shopping area at Westlink Center on the southwest corner of Central and Tyler. All corners of the Central and Tyler intersection are developed with a variety of retail uses. There is one house immediately north of the AutoZone that was rezoned in 1996 to "LC." Three houses remain zoned "SF-6" between the AutoZone and the intersection, with two being currently offered "for sale."

Wilbur Middle School is located across Tyler to the east. To the south, the property is zoned "SF-6" and is occupied by several residences. There is a drainage ditch along the west. The property beyond the drainage ditch and Wood Lane consists of single-family residences.

The northern tract, which adjoins the entrance to Westlink Village, is vacant. A single-family residence is located on the southern tract.

CASE HISTORY: The property is unplatted. A zoning request from "AA" Single-Family to "BB" for the southern tract was denied (Z-2742) April 1, 1986.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"; "SF-6"	Apartments, retail uses, three residences
SOUTH: "SF-6"	Residences
EAST: "SF-6"	Wilbur Middle School
WEST: "SF-6"	Residences, drainage ditch

PUBLIC SERVICES: The property is located along Tyler Road, an arterial street. Traffic counts for 1997 were 18506 ADTs on the south leg of the intersection of Central and Tyler. Projected volumes for 2030 are 24,499. The southern tract has one existing drive entrance onto Tyler. There is no curb cut to the northern tract. Tyler is improved as a four-lane arterial with no left-turn storage or right-turn lanes in front of the subject property. Currently, a short right-turn accel/decel lane begins at the northern edge of the AutoZone and ends at the edge of the major opening to the Westlink Village Apartments. The major opening has a divided entrance with one lane entering and two lanes exiting onto Tyler.

Tyler carries a heavy volume of through traffic. Also, the presence of Wilbur Middle School on the eastern side creates heavy turning movements during the beginning and ending of the school day. The CIP has scheduled addition of a continuous two-way left turn lane from Maple to Central in 2007.

Public water and sewer services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as "low density residential." The adjacent property to the north is identified as "commercial."

"Commercial Locational Guidelines" for small-scale commercial sites include (1) being located adjacent to arterial streets that provide needed ingress and egress in order to avoid traffic congestion, and not feeding directly onto local residential streets; (2) having required site-design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential areas, (3) being in compact clusters rather than strip developments, and (4) guiding commercial uses located in planned centers toward established areas of similar development.

"Office Locational Guidelines" include (1) being located adjacent to arterial streets; (2) local, service-oriented offices being incorporated within or adjacent to neighborhood and community scale commercial development, and (3) having low-density office use as a transitional land use between residential uses and higher intensity uses.

RECOMMENDATION: This property represents the edge to commercial uses to the north and residential uses to the south. The character of Tyler Road from Maple to 21st Street North is that of heavily traveled arterial street with commercial uses clustered on the corners of the intersections at Maple, Central, 13th and 21st. The mid-mile locations, however, were developed with residences, most of which face directly onto Tyler. Other mid-mile location uses include Wilbur Middle School, churches, a cemetery, a day care, and several offices. There are several mid-mile office uses already located along Tyler, primarily north of Central. The unifying characteristic of all mid-mile office locations is that they all are developed in a residential character, including a pitched roof and building materials compatible with the surrounding residential areas, or are located in residences that have been remodeled for office use. The result has been to encourage continued residential use in the mid-mile locations along Tyler Road.

The application area has served as the boundary between residential and commercial use on the western side of Tyler, south of Central. Any zoning change to these tracts needs to retain a strong buffer between the residential and commercial uses, and restrict any negative impact of traffic flow along Tyler.

Based on these considerations and upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and subject to the following.

- A. APPROVE the zone change to "NR" Neighborhood Retail for the northern 94.7 feet of the application area.
- B. APPROVE the zone change to "GO" General Office for the southern 94.7 feet of the application area.
- C. The property shall be subject to a Protective-Overlay with the following conditions:
 - 1. The property shall be developed with a building that has a residential character, and that includes brick, masonry, wood or composite siding; a double-pitched roof with a minimum vertical rise of 4 inches for every twelve inches; and a maximum height of 25 feet.
 - 2. The southern 94.7 feet shall be restricted to only those uses permitted in the "NO" Neighborhood Office district. Property development standards, including but not limited to minimum lot size, width and setbacks shall be those of the "NO" Neighborhood Office district.
 - 3. Freestanding signs shall be monument type with a maximum height of 10 feet.
 - 4. The northern 94.7 feet shall have no point of access onto Tyler Road; the southern 94.7 feet shall be restricted to one point of access onto Tyler Road.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The land north and northeast is commercial; the land to the northwest is multi-family. The property across Tyler Road is zoned "SF-6" but is the site of Wilbur Middle School. All property to the south and west is residential, and includes other residences facing onto Tyler and a drainage ditch along the rear of the application area.
- 2. The suitability of the subject property for the uses to which it has been restricted: In particular, the northern tract has remained vacant, probably due to its proximity to the commercial uses to the north. It is unlikely any "SF-6" development would occur on this property. The southern tract is developed with a residence and could continue to be used in this manner.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: "GO" General Office allows office uses, a few commercial uses, a wide range of public and civic uses, and a range of residential uses that would not be permitted in "SF-6" district. Approval of the zoning request might increase pressure for more office uses along Tyler Road south toward Maple. However, the P-O to restrict the "GO" tract to "NO" uses would eliminate the more intense commercial uses. Additionally, the site size eliminates some of public, civic, and higher intensity residential uses. The drainage ditch provides rear yard separation between the adjacent tract and the residences to the east. This eliminates some of the potential conflicts between the "GO" uses and the "low density residential" uses. The separation of the "NR" tract with a "GO" tract that has been restricted to "NO" uses should reduce pressure for encroachment of other commercial uses to the south.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide, although there is a precedence for "office" designation on the Land Use Guide in other similar locations along Tyler Road. The "NR" tract would be a buffer between the "LC" tract to the north, which is in conformance with Commercial Locational Guidelines.
- 5. Impact of the proposed development on community facilities: The major impact is the projected increase in traffic along an arterial street where turning movements would impede the traffic flow. This could be mitigated by limiting driveways as recommended, and extending the accel/decel lane across the front of the property.

GOLTRY "This request was originally filed for 'NR' Neighborhood Retail for this small tract on the north, which is about .4 of an acre and 'GO' restricted to 'NO' uses for this equally sized, about .4 of an acre site here (indicating). It is located along Tyler Road, 1/3 mile south of Central.

The applicants would like to build an optometrist's office on the southern tract, which is the office use, and have a retail outlet for eyewear; an optical shop, on the northern tract. The reason for the request for 'GO' rather than for 'NO' is because they had potentially thought that their building would exceed the 8,000 square foot maximum size limits for 'NO' Neighborhood Office. That is because they were looking at building a 5,000 square foot building on the main level with a 5,000 square foot basement.

Immediately to the north of the tract is a divided entrance to the Westlink Village Apartments, which is zoned 'LC'. Then we have the AutoZone. There is a little house that has been rezoned 'LC'. I believe an application was filed on Monday for the rezoning of these two houses (indicating) to 'LC'. The rest of this tract is 'LC', all the way up to Central, then you have commercial activities and you come down to the Braum's. Then there is a transition to a different type of land use. We have Wilbur Middle School. When you go south of the application area, we are into residential zoning and residential character, even along Tyler Road. The houses face onto Tyler and it is residentially developed in all of this mid-mile section from this point (indicating) south to a similar distance from Maple Road. They have a nice drainage ditch along

the back, which will serve as a nice buffer between their land use and the church to the rear of them, and then the surrounding residences to the south and to the west.

(Indicating at slide of the site) This is a picture of the application area. The northern tract is vacant, the southern tract is located with a house that would be removed for the redevelopment of the office. As we are all aware, Tyler is a very busy street and has a lot of traffic. It is scheduled on the C.I.P. for continuous two lane; two-way left-turn lanes to be added to it between Maple and Central in 2007. Currently there is one opening onto Tyler on the southern tract and no opening on the northern tract, so for access management, we have recommended that the tract be limited to one access point.

This property is an edge property. It is between the commercial and the residential areas. We see that it fits into the office location guidelines of having a low density office use as a transitional land use between residential and higher intensity uses, and we have recommended approval of the application for 'NR' for the northern tract; for 'GO' restricted to 'NO' uses for the southern tract, subject to a Protective Overlay that has four provisions. The first provision deals with residential character. It is ensuring that the building will, in fact, be built in a residential style office. This is similar to almost all of the mid-mile offices along Tyler Road from Central to 21st Street. They have that residential character in terms of pitched roofs, similarity of residential materials and height limitations.

The second Protective Overlay provision I have already mentioned. It is restricting the 'GO' to 'NO' uses. The third one is that signs be restricted to no more than 10 feet in height and the fourth, which I have also already mentioned, that there be one point of access onto Tyler Road for both of the tracts. I will stand for questions."

MCKAY "You did say that this was run by Traffic Engineering as far as the one approach only onto Tyler Road?"

GOLTRY "That was my understanding. They are entitled to one opening because they already have one existing opening."

MCKAY "Okay, how about the street to the north?"

GOLTRY "We looked at that possibility. One of the problems is the way that that is divided. And with the depth of the lot there (pointing to Westlink Village Apartments entrance), it would be possible to have people doing right turns, but you really couldn't cross the median. If you were coming south on Tyler and were to try to turn in to their entrance, you would be blocked by their median from being able to get into the site, pretty much."

MCKAY "On the road that goes to the north side, it is a private drive, correct?"

GOLTRY "Yes, it is a private drive."

MCKAY "So, are they going to have access to this site from that private drive?"

GOLTRY "Not that I am aware of, no."

MCKAY "They would have to come up with this issue at platting. That's why I asked."

GOLTRY "Yes. The one entrance gives them that ability. I should say that we did bring up that issue with them in a meeting and suggested that they try to pursue that option."

WARREN "Just a point of clarification, maybe. These two 94.7 foot lots, couldn't they both come under one of these zoning classifications and still be able to do what they are asking to do? Why would we split those two lots into those two technical zones when maybe one of them would cover it?"

GOLTRY "Obviously, 'NR' will do everything they want to do and more because it offers more uses. That was their original request. 'NO' is a lower intensity use, which is a better buffer zone between this use and the residents to the south, which is why we pursued the idea that the restriction to 'NO' uses does provide a good edge to the commercial uses between it and the house to the south. I should mention also that I do believe you received the D.A.B. report at your desk. I read through it, but does it make mention of the fact that there was opposition from the adjoining property owners? I believe, when I read through it, it did not mention that."

WARREN "Well, it just seems to me that one zoning in there would cover both of these intended uses with a Protective Overlay. It sure would clean this up a lot more."

KROUT "I think you could reserve those comments until after the public hearing."

CARRAHER "Are there any further questions of staff? Thank you. Would the applicant like to speak to the issue?"

ROB HARTMAN "I am with P.E.C., here on behalf of the applicant. I would just like to point out that we are in agreement totally with the staff comments."

To answer Mr. Warren's question, the reason for the two different zoning classifications is that the 'GO' allows for more than 5,000 square feet in one office building and they need 10,000 square feet for their office. That is why they need the

'GO'. The 'NR' permits a retail outlet for eyewear, which 'GO' will not permit. They wanted the option of having a retail eyewear outlet. That is the answer to that.

On the access to the north, that is a private drive back into the apartments. It has a divided median and a landscape buffer on the south side, so we don't think we are going to be able to get access onto that private drive, but we wouldn't mind getting it. What we have is Light Commercial zoning north on Tyler Road, and we feel that the 'NR' and the 'GO' provide kind of a step-down buffering from that Light Commercial down to 'GO', which will then abut up against the residential property to the south. The applicant owns the existing house on the south half of the property. He has owned it since 1984. It is a rental property at this time and he has his current business in the Westlink Shopping Center on Central, just west of Tyler and he would like to open his own office here on this site that he has owned for several years. So he feels that this would be a good opportunity, particularly with the increased traffic on Tyler and the changing complexion of Tyler Road.

We know that there is some opposition as far as what we call 'mid-block office uses', but we can see those up and down Tyler more and more every day. There is an existing dental office just south of Wilbur High School on the east side of Tyler right now, and there are several other businesses north of Maple that aren't residential.

We have talked to the residents to the south. We are willing, of course, to do all of the required buffering along the neighboring property line there for the residents; either provide landscaping or screening fence or a wall or whatever his preference would be there. Other than that, I think the applicant is here to answer any questions you might have, and I am also available for questions."

CARRAHER "Are there any questions of the applicant? Thank you. Now, moving to the gallery. Is there anybody in the gallery wanting to speak in favor of the issue? Seeing none, is there anybody in the gallery wishing to speak in opposition to the issue? With that in mind, we will move it back to the Commission. Are there any questions or any commentary from the Commission? What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The land north and northeast is commercial; the land to the northwest is multi-family. The property across Tyler Road is zoned "SF-6" but is the site of Wilbur Middle School. All property to the south and west is residential, and includes other residences facing onto Tyler and a drainage ditch along the rear of the application area. The suitability of the subject property for the uses to which it has been restricted: In particular, the northern tract has remained vacant, probably due to its proximity to the commercial uses to the north. It is unlikely any "SF-6" development would occur on this property. The southern tract is developed with a residence and could continue to be used in this manner. Extent to which removal of the restrictions will detrimentally affect nearby property: "GO" General Office allows office uses, a few commercial uses, a wide range of public and civic uses, and a range of residential uses that would not be permitted in "SF-6" district. Approval of the zoning request might increase pressure for more office uses along Tyler Road south toward Maple. However, the P-O to restrict the "GO" tract to "NO" uses would eliminate the more intense commercial uses. Additionally, the site size eliminates some of public, civic, and higher intensity residential uses. The drainage ditch provides rear yard separation between the adjacent tract and the residences to the east. This eliminates some of the potential conflicts between the "GO" uses and the "low density residential" uses. The separation of the "NR" tract with a "GO" tract that has been restricted to "NO" uses should reduce pressure for encroachment of other commercial uses to the south. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide, although there is a precedence for "office" designation on the Land Use Guide in other similar locations along Tyler Road. The "NR" tract would be a buffer between the "LC" tract to the north, which is in conformance with Commercial Locational Guidelines. Impact of the proposed development on community facilities: The major impact is the projected increase in traffic along an arterial street where turning movements would impede the traffic flow. This could be mitigated by limiting driveways as recommended, and extending the accel/decel lane across the front of the property.) I move that we recommend to the governing body that the request be approved, subject to platting within one year and subject to the following:

- A. APPROVE the zone change to "NR" Neighborhood Retail for the northern 94.7 feet of the application area.
- B. APPROVE the zone change to "GO" General Office for the southern 94.7 feet of the application area.
- C. The property shall be subject to a Protective-Overlay with the following conditions:

1. The property shall be developed with a building that has a residential character, and that includes brick, masonry, wood or composite siding; a double-pitched roof with a minimum vertical rise of 4 inches for every twelve inches; and a maximum height of 25 feet.
2. The southern 94.7 feet shall be restricted to only those uses permitted in the "NO" Neighborhood Office district. Property development standards, including but not limited to minimum lot size, width and setbacks shall be those of the "NO" Neighborhood Office district.
3. Freestanding signs shall be monument type with a maximum height of 10 feet.
4. The northern 94.7 feet shall have no point of access onto Tyler Road; the southern 94.7 feet shall be restricted to one point of access onto Tyler Road.

MCKAY moved, **OSBORNE-HOWES** seconded the motion.

CARRAHER "Are there any questions or commentary to the motion? Seeing none, we will move to a voice vote."

VOTE ON THE MOTION: The motion carried unanimously (13-0).

7. **Case No. ZON2000-00037** - Raymond P. and Sharon L. Lansdowne (Owner/Applicant) request zone change from "B" Multi-Family to "NO" Neighborhood Office, on property described as:

Lot 1, Block 1 Lansdowne Addition, Wichita, Sedgwick County, Kansas. Generally located on the southeast corner of 2nd Street North and Tyler Road.

SCOTT KNEBEL, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "B" Multi-Family to "NO" Neighborhood Office on a 1.2 acre platted tract located at the southeast corner of 2nd Street North and Tyler Road. The site is currently developed with a single-family residence that has been converted into an office for the applicant's dental practice. The structure on the site has been damaged by fire, and the applicant proposes to raze the existing structure and redevelop the site with an office center to house the applicant's dental practice as well as offices for other professionals such as accountants, architects, attorneys, etc. The site's current "B" Multi-Family zoning permits offices for medical services but does not permit offices for other professions. Although the size of the proposed office center is not indicated in the application, a 1.2 acre site typically can support an office center of approximately 15-18,000 square feet.

The surrounding area is characterized by institutional uses to the north and single-family residential uses to the south, east, and west. The property immediately north of the site across 2nd Street North is zoned "SF-6" Single-Family Residential and is developed with Wilbur Middle School. The remaining properties surrounding the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences. One single-family residence across Tyler Road is being used as a beauty shop, apparently as a home occupation.

CASE HISTORY: The site is platted as the Lansdowne Addition, which was recorded March 5, 1985. The zoning of the site was changed (Z-2634) from "AA" One-Family to "B" Multi-Family on March 15, 1985.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Middle School
SOUTH: "SF-6" Single-Family
EAST: "SF-6" Single-Family
WEST: "SF-6" Single-Family

PUBLIC SERVICES: The site has access to 2nd Street North and Tyler Road. 2nd Street North is a two-lane collector street with no traffic volume data available. Tyler Road is a four lane arterial with a 1997 traffic volume of approximately 15,000 vehicles per day. The 2030 Transportation Plan estimates that traffic volume on Tyler Road will increase to approximately 23,000 vehicles per day and recommends that Tyler Road be widened to five lanes. The City's Capital Improvement Program includes a project to widen Tyler Road to five lanes from Maple to Central in 2007. As proposed, the office center would generate approximately 140-175 additional vehicles per day. Since the site has frontage to both an arterial street (Tyler Road) and a collector street (2nd Street North), planning staff recommends that access to the site be exclusively from the collector street to limit the impact of increased traffic and turning movements on the capacity of the arterial street. Public water and sewer currently serve the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Low Density Residential category provides for the lowest density (1 to 6 units per acre) of urban residential land use and consists of single-family detached homes, zero

lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units.

The Comprehensive Plan indicates that neighborhood-oriented office developments are anticipated to take place as part of planned commercial centers. The Comprehensive Plan indicates that one type of planned commercial center is a commercial convenience center, which ranges in size from 2-4 acres, is typically expected to develop at one or more corners of arterial intersections, and may be appropriately located at the intersection of an arterial and a collector street, where proper turn lanes are in place or planned. The subject property is smaller than the typical convenience center and is located at the intersection of an arterial street and a collector street with a future turn lane planned for construction on the arterial street.

The Office Locational Guidelines in the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The proposed office center would serve as such a transitional use between the single-family residential uses located south of the subject property and the institutional use located north of the subject property.

RECOMMENDATION: Based upon several factors, planning staff finds the subject property appropriate for neighborhood office uses. First, the subject property is currently zoned "B" Multi-Family (which permits medical offices) and has been used as an office for approximately 15 years without noticeable detrimental impacts upon surrounding properties. Second, the "NO" Neighborhood Office district does not permit multi-family uses by-right (the "B" district permits multi-family uses up to 75 units per acre), and the proposed neighborhood office uses likely will have less impact on the surrounding properties than redeveloping the site with multi-family uses. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following condition of a Protective Overlay:

1. The applicant shall dedicate by separate instrument complete access control along the subject property's Tyler Road frontage.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by institutional uses to the north and single-family residential uses to the south, east, and west. The property immediately north of the site across 2nd Street North is zoned "SF-6" Single-Family Residential and is developed with Wilbur Middle School. The remaining properties surrounding the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences. One single-family residence across Tyler Road is being used as a beauty shop, apparently as a home occupation.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multi-Family, which permits offices for medical services. The site could be redeveloped with an office center for strictly medical services; however, the proposed office center for multiple professions should have the same impact as an office center for medical services only.
4. Extent to which removal of the restrictions will detrimentally affect nearby property: The "NO" Neighborhood Office district will reduce the potential detrimental affects that could result from the property being redeveloped with high-density residential uses under the current "B" Multi-Family zoning.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Although the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development, the Comprehensive Plan indicates that neighborhood-oriented office developments are anticipated to take place as part of planned commercial centers. The Comprehensive Plan indicates that one type of planned commercial center is a commercial convenience center, which ranges in size from 2-4 acres, is typically expected to develop at one or more corners of arterial intersections, and may be appropriately located at the intersection of an arterial and a collector street, where proper turn lanes are in place or planned. The subject property is smaller than the typical convenience center and is located at the intersection of an arterial street and a collector street with a future turn lane planned for construction on the arterial street.

The Office Locational Guidelines in the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The proposed office center would serve as such a transitional use between the single-family residential uses located south of the subject property and the institutional use located north of the subject property.

5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted, especially with the dedication of access control along the Tyler Road frontage. Once the planned turn lane is constructed on Tyler Road, the impact of the proposed development on the capacity of the arterial street will be further mitigated.

KNEBEL "This site is currently developed with a single-family residence. It doesn't show up as well as I thought it might, due to the trees in that picture. This single-family residence property was changed from single-family zoning to multi-

family zoning in 1985 to permit the conversion of that residence to a dentist's office. This particular structure was recently damaged by fire and the applicant is proposing to raze the existing structure and redevelop the site with an office complex that would include his dentist office as well as offices for other types of professionals.

Since the 'B' Multi-family only permits medical offices, the request for Neighborhood Office was submitted to allow those other types of office uses. The properties to the east side of Tyler is Wilbur Middle School. South of Second Street is single-family residences. South on Tyler, immediately to the south of the subject property is entirely single-family, and the same with the other side of Tyler for at least a couple of blocks. The site currently has access to Second Street and to Tyler Road. Second Street is a two-lane collector street and to Tyler Road, which is a four lane arterial street. Tyler is scheduled in the City's Capital Improvement Program to be widened to include a center turn lane in the year 2007. The Planning staff is recommending, in order to prevent this redevelopment from impacting the through traffic on Tyler that the access to the site be only from Second Street.

The Comprehensive Plan indicates that this site is appropriate for residential development. For the most part, the area is developed with single-family residences or some institutional uses to the north in the form of the school, and then a little further to the north is a rather large commercial area at Central and Tyler. The Comprehensive Plan indicates that office developments are appropriate as a buffer between residential uses and higher intensity uses, such as the Middle School.

Staff has looked at a couple of factors on this application in determining that the recommendation should be for approval. First, the site is currently developed with an office and has been for approximately fifteen years and does not appear to have any detrimental impacts upon the surrounding properties. The application request is for a similar use and the Planning staff feels that the impacts would be of a similar nature. In addition, the Neighborhood Office district also has greater restrictions on Multi-family uses. The 'B' Multi-family district is the highest intensity multi-family district on the Zoning Code and permits up to 75 units per acre.

At the District Advisory Board meeting, when that particular point was made, there was a resident that lived immediately to the south of the subject property who indicated that he would much prefer to live to an office than to an apartment building. I think we have heard that same comment from others, including from a case earlier today. Based on these factors, the recommendations, and the findings that are listed on Pages 3 and 4, the Planning staff is recommending approval with a Protective Overlay that requires a dedication of access control along Tyler. With that, I will stand for questions."

OSBORNE-HOWES "Scott, I just wondered when you took those pictures. I have never seen so little traffic on Tyler."

KNEBEL "This was on one of those 110 ° days and I got out about 7:30 a.m. and got to the site at maybe 9:00. Something like that."

MCKAY "You are showing here that the folks don't have to plat?"

KNEBEL "That's correct. This property was replatted in 1985 when it was zoned to 'B' Multi-family."

MCKAY "On that plat you are recommending to only have access off of Second Street?"

KNEBEL "That is correct."

MCKAY "On the present plat, do they have access onto Tyler Road?"

KNEBEL "Yes, they do. They have one opening onto Tyler."

MCKAY "How are you going to handle that?"

KNEBEL "With a Protective Overlay requiring a dedication."

MCKAY "Okay."

CARRAHER "Are there any further questions of staff?"

MICHAELIS "Scott, on the answer you just gave there, does that mean that the opening they have now is going to have to be closed by the Protective Overlay?"

KNEBEL "That is correct. Actually, I believe the applicant has a letter that was distributed to you that kind of explains his position. I think it is probably best to just hear the applicant before we try to decide."

CARRAHER "Are there any further questions of staff? Would the applicant like to speak to the issue?"

RAY LANSDOWNE "I am a dentist and the owner of the said property. My residence for the last thirty years has been at 1367 Caddie. That is close in that region. I wrote down my comments, not knowing for sure why, but maybe to avoid any rendezvous in some alley. I didn't want to say the wrong thing."

On June 23 of this year, I experienced a fire at my primary office location at 250 North Tyler Road. I was fortunate, and in spite of the heat and smoke censures and a security monitoring firm's equipment in place, it was an early morning passerby that saw the fire and called it into 911. For that person or persons, I am truly grateful. I was blessed in many ways. Only items stored in the garage area were destroyed by the fire heat. Smoke was the only affect on supplies, records and equipment. Supplies were lost, yet very replaceable. Another blessing I count was that I had a second location and although through the able assistance of my friend Dan Kryes in the Service Master business to handle the clean-up operations at our Tyler location, within two hours of normally opening, we were treating our scheduled patients at the east location.

I am too old to start over, but I am too young to just quit. Besides that, if I don't rebuild, the insurance company keeps 30% of the money from the insurance policy. Were I to rebuild at the present zoning, I am limited to medical or dental occupancy, even were I to build additional space. Most medical professionals prefer to own their own buildings rather than lease, and if I rebuild only for my office, the first ten to fifteen years of the typical mortgage results in little equity and mostly interest payments. It works out in the long haul, but for the practice life I have left, I am better off building extra space to lease out and help build equity more rapidly or withdraw the zoning request and build apartment units.

The new zoning I am requesting will allow for the greater tenant base of professionals outside the medical/dental family. My concern now is the staff recommendation that although it favors the zoning change, their approval came subject to the condition of a Protective Overlay, in essence that there be no access along Tyler Road. Presently such entry is allowed and was initially in the plans when I remodeled the house for dental use. As a one-business location, I felt that the Tyler Road access would be more of a liability than an asset with the hopeful prospect of two or three tenants and a low traffic flow in and out of the parking area could prove to be a drawback, were it restricted to only to Second Street.

It is not uncommon for the vehicles waiting to turn onto Tyler from Second Street to be backed up well east of my present parking entrance. That was the defining picture there with no traffic. I don't think I have ever seen no traffic along there, including after midnight. During school drop-off and pick-up hours, it is very difficult and somewhat hazardous with the kids running across Second Street to and from waiting buses, cars and vans, producing traffic congestion to enter and exit on Second Street from my office parking lot. For these compelling reasons, I am requesting the removal of the Protective Overlay restriction of the Tyler Road access to allow for access at the far south border of the property where it is now designed to enter the existing parking lot.

I am willing to wait for the installation of that entrance until 2007 when widening of Tyler Road is scheduled for completion. Thank you for your consideration of this, an important aspect for the rebuilding of this site."

CARRAHER "Are there any questions for the applicant? Thank you. Is there anyone in the gallery who wishes to speak in favor of this issue? Seeing none, is there anyone in the gallery wishing to speak in opposition to the issue? Seeing none, we will move it back to the Commission. Are there any questions or commentary regarding the issue from the Commission?"

MCKAY "My concern still is the platted, already in place drive. The applicant is willing to waive that until they widen the street. I guess I am having a problem with that. He has already dedicated the right-of-way for the future street. I am almost in favor of his suggestion. It won't be there until 2007 when they widen the street. That will be part of the street project."

WARREN "What are you recommending?"

MCKAY "Well, he recommended that he could put it on the extreme south end of his property and he wouldn't do it until 2007, or whenever Tyler Road is widened."

WARREN "What do you say?"

MCKAY "What do I say? It wasn't my idea, it was the applicant's idea. I guess I need a staff comment. They are recommending that we close it completely."

KROUT "Scott, did you talk to the Traffic Engineer about this?"

KNEBEL "I did. I spoke with the Traffic Engineer, and the primary concern with having an access to this lot is the fact that it is so close to Second Street. I forget the exact width of the lot, but it is less than 200 feet wide. Typically, you want to have at least 150, if not more, of separation between access points on an arterial."

KROUT "Didn't the applicant indicate he is willing to restrict it to the southern portion of the lot?"

LANSDOWNE (From the audience) "The present driveway to the house is really close, but I don't use that at all. I used to block it off with blocks, but people kept driving over the top of them anyway. So I leave it open now, but it hasn't been really utilized for an entrance or exit."

JOHNSON "The applicant brought up a very good point. I mean, I understand Traffic not wanting another exit or entrance off of Tyler with that school across the street and dropping kids off. If his only entrance was there, that isn't a good traffic deal either. In this particular case, I am probably in favor, as long as they keep it to the southern portion of the lot."

HENTZEN "I just want to be sure I understand this. Until that southern driveway is established, he would be using the present driveway off of Second Street, is that correct?"

LANSDOWNE (From the audience) "To my knowledge, yes, it is."

MARNELL "Marvin, would this be an appropriate case, also, where we get an advance agreement for a shared drive if that property to the south develops commercial in the future, so we can have limited access to these major thoroughfares?"

KROUT "That is a good point. I think the reason we didn't suggest it in this case is because we hadn't contemplated that we would continue stripping down Tyler with additional commercial uses, but if you feel that that is a possibility, then that is a consideration, especially if you are going to locate it on the southern portion of the lot anyway."

MARNELL "It seems to me like it is a likely outcome."

KROUT "The Planning Commission, when we have small lots like this that over time may develop for other uses, has tried to encourage the lot owners to share access points so we won't have an access point for every lot going all the way up and down the street. So in a case like yours, if your future access point was going to be at the south end of the lot, and then the owner to the south came in and asked for Office zoning, what he is asking is would you have an objection to being willing to share your access point with that lot so that we don't have to have a separate access point less than 100 feet away."

LANSDOWNE "The one to the south of me is presently single-family. That is the one you are speaking of."

KROUT "Presently single-family, and it may always stay single-family, but if the zoning were to change and that property owner wanted to develop for an office, the question is would you be willing to share your access drive at the south end of your lot with that lot to the south if it redeveloped?"

LANSDOWNE "I would think that that would be a viable option to work out whatever. I am not a commercial developer or anything like that, so I don't know what the ramifications would be, but I don't see any reason why that couldn't be a shared situation."

KROUT "I think you could roll all of that into the dedication instrument then."

CARRAHER "Are there any further questions or commentary regarding the issue from the Commission? What is the pleasure of the Commission then?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is characterized by institutional uses to the north and single-family residential uses to the south, east, and west. The property immediately north of the site across 2nd Street North is zoned "SF-6" Single-Family Residential and is developed with Wilbur Middle School. The remaining properties surrounding the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences. One single-family residence across Tyler Road is being used as a beauty shop, apparently as a home occupation. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multi-Family, which permits offices for medical services. The site could be redeveloped with an office center for strictly medical services; however, the proposed office center for multiple professions should have the same impact as an office center for medical services only. Extent to which removal of the restrictions will detrimentally affect nearby property: The "NO" Neighborhood Office district will reduce the potential detrimental affects that could result from the property being redeveloped with high-density residential uses under the current "B" Multi-Family zoning. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Although the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development, the Comprehensive Plan indicates that neighborhood-oriented office developments are anticipated to take place as part of planned commercial centers. The Comprehensive Plan indicates that one type of planned commercial center is a commercial convenience center, which ranges in size from 2-4 acres, is typically expected to develop at one or more corners of arterial intersections, and may be appropriately located at the intersection of an arterial and a collector street, where proper turn lanes are in place or planned. The subject property is smaller than the typical convenience center and is located at the intersection of an arterial street and a collector street with a future turn lane planned for construction on the arterial street. The Office Locational Guidelines in the Comprehensive Plan indicate that low-density office uses can serve as a transitional land use between residential uses and higher

intensity uses. The proposed office center would serve as such a transitional use between the single-family residential uses located south of the subject property and the institutional use located north of the subject property. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted, especially with the dedication of access control along the Tyler Road frontage. Once the planned turn lane is constructed on Tyler Road, the impact of the proposed development on the capacity of the arterial street will be further mitigated.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The dedication by separate instrument of complete access control along the subject property's Tyler Road frontage except for the south 40 feet and cross lot access for the abutting lot to the south at such time that the lot to the south is developed with a non-residential use.

MCKAY moved, **LOPEZ** seconded the motion.

KROUT "The south 40 feet and shared with the property to the south if it is rezoned."

JOHNSON "Until there are improvements to Tyler, the drive stays where it is and he can use it? Is that correct?"

KROUT "Is that your intention? There is a drive on Tyler today and your intention is to use that in its existing location?"

LANDSOWNE "No."

KROUT "It is to use Second Street until Tyler is improved?"

LANDSOWNE "Yes."

WARREN "Would you like to use Tyler now?"

LANDSOWNE (From audience) "It would probably depend on the construction that they do. Right now, I guess I have the access with the zoning that is there."

KROUT "He wants to retain his south entrance. So I assume that is part of the motion, then. Intending to have complete access control and close that."

CARRAHER "Is there any other commentary or questions?"

JOHNSON "There is one other comment. I don't know whether staff took a picture of how he mounted his sign out there for notification. It was very nicely done."

OSBORNE-HOWES "That is true. I saw that."

CARRAHER "Are there any other questions or commentary? Then we will move into a voice vote."

VOTE ON THE MOTION: The motion carried unanimously (13-0).

8. **Case No. ZON2000-00038** - Larry L. Muller and Carol A. Muller (Owners/Applicants); c/o Al Herman (Agent) request zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial on property described as:

The East Half of Lots 15 and 16, Block B, Westbreeze Second Addition, Sedgwick County Kansas. Generally located on the northwest corner of Maple and Bebe.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicants are requesting a zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial on two platted lots containing less than a one acre (20,149 sq. ft.) located at the northwest corner of Maple and Bebe Streets. The applicants have not identified a specific use but plan to develop the property for retail uses. Currently the single-family house located on the application area is being rented and used as a residence. Access to the lots is from Maple, a four-lane arterial and a private drive off of Bebe, a residential street. There is one opening along Maple into the property.

The surrounding area has mixed uses with single-family residential uses to the west and north, retail uses to the east with the "Maple Street Mini Mall" and car wash further to the east that are zoned "LC" and the Towne West Shopping Center to the south that is zoned "LC." Currently, there is considerable commercial development taking place along Maple, progressing west of West Street.

Although the applicant is requesting "LC" Limited Commercial, MAPD staff believes that the "NR" Neighborhood Retail zoning category would be more appropriate for the application area. The purpose of the "NR" retail district is to accommodate very-low intensity retail and office development and other complementary land uses that serve and are generally appropriate near residential neighborhood. The "NR" designation will serve as a buffer from more intense commercial uses to the east. The applicants have no specific plan at this time but generally want to operate a retail business. There is a wide range of commercial uses permitted with a "NR" zoning designation per the Wichita-Sedgwick County Unified Zoning Code (UZC).

CASE HISTORY: The subject property (lots 15 & 16) is currently platted as the "Westbreeze Second Addition" in 1949.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6"	Residential Dwellings
SOUTH: "LC"	Towne West Shopping Center
EAST: "LC"	Mini Mall/Car Wash
WEST: "SF-6"	Residential Dwellings

PUBLIC SERVICES: This site has one access from Maple, a four-lane arterial, and a private drive off of Bebe, a residential street. Traffic volumes for 2000 are 20,772 (ADT) along Maple. Traffic volumes projected for 2030 are projected to be 26,009. Maple Street has been widened for access to and from Towne West and a fifth lane storage turning lane is in place. Municipal services are available to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units. Schools, churches and other similar uses are also found in this category. The request does not technically conform to the Land Use Guidelines as suggested in the Comprehensive Plan. The Comprehensive Plan indicates, however, that commercial uses are appropriate directly to the east (mini mall and car wash) and south (Towne West Shopping Center) of the application area.

RECOMMENDATION: Based upon these concerns, and the information available prior to the public hearing, planning staff recommends following:

- A. APPROVE the zone change (ZON2000-00038) to "NR" Neighborhood Retail subject to replatting within one year and subject to the following conditions:
1. The application area shall be restricted to those uses allowed as permitted uses in the "NR" Neighborhood Retail zoning district.
 2. Building heights shall be limited to 25 feet in height.
 3. The applicants will comply with noise, setback and height compatibility standards, zoning screening and landscaping requirements
 4. The applicants shall submit a landscape plan to the Director of Planning for approval prior to development.
 5. The application area will have two points of access along Bebe; there will be no access from Maple.
 6. The applicants shall dedicate 2 feet of additional utility easement along the northern perimeter; 2 feet from the south side of the existing 8-foot utility easement, thus upgrading this utility easement to current city standards (10 feet).
 7. The applicants shall dedicate, by separate instrument, 10 feet of additional right-of-way (ROW) along Maple.
 8. Outdoor speakers and sound amplification systems shall not be permitted.
 9. Prior to publishing the resolution or ordinance establishing the zone change, the applicants shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area has mixed uses with single-family residential uses to the west and north with a mini mall and car wash further to the east that are zoned "LC" and the Towne West Shopping Center to the south that is zoned "LC." Currently, there is considerable commercial development taking place along Maple, progressing west of West Street. The most directly impacted properties

by the proposed development are several residential properties zoned "SF-6" Single-Family Residential located to the west and north, where the character of development is that of predominately single-story dwellings.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-6" Single-Family Residential and could be developed for single-family use. This proposed commercial development would discourage residential use in the immediate vicinity.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The suggested "NR" Neighborhood Retail zoning designation would reduce the intensity of commercial uses allowed on the application area. With these restrictions, the retail uses could serve as a buffer between the residential uses to the west and north and the commercial activities concentrated south of the application area (Towne West Shopping Center).
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the 1999 Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units. Schools, churches and other similar uses are also found in this category. The request does not technically conform to the Land Use Guidelines as suggested in the Comprehensive Plan. The Comprehensive Plan indicates, however, that commercial uses are appropriate uses directly to the east (mini mall and car wash) and south (Towne West Shopping Center).
5. Impact of the proposed development on community facilities: This site has one access from Maple, a four-lane arterial, and a private drive off of Bebe, a residential street. Traffic volumes for 2000 are 20,772 (ADT) along Maple. Traffic volumes projected for 2030 are projected to be 26,009. Maple Street has been widened for access to and from Towne West and a fifth lane storage turning lane is in place. The applicant is being required to dedicate, by separate instrument, an additional 10 foot of right-of-way along Maple. The presence of a single point of access onto Maple could pose potential traffic problems for turning, both into and out of the site. There will be two points of access along Bebe. The applicant is being required to close the access along Maple.

CARROLL "To the south of this request is Towne West, to the east is a mini-market strip center, to the west is residential and to the northwest it is primarily residential. Maple is pretty wide at this point. The owner to the west has submitted a document stating that they have no objection to this particular request. It is in the material that has just been presented to you.

The applicants have recently submitted a site plan for you to take a look at. They are looking at a possible beauty shop, and an insurance agent's office. Although they are wanting 'LC', we are recommending 'NR' Neighborhood Retail that we thought would serve as a buffer between the residential to the west and northwest and would, at the same time, accommodate what they are wanting to do.

I would add that last night there was a District Advisory Board IV meeting and they voted 6-0, with Mr. Carraher abstaining from voting, to recommend approval. I would like to bring your attention to the recommendations, Item No. 5. After seeing the site plan and speaking with the Traffic Engineer, we are recommending that there be no access along Maple and two access points along Bebe. That is what the District Advisory Board voted to approve.

In summary, we are recommending approval of 'NR', Neighborhood Retail, and I would be pleased to answer any questions you might have."

OSBORNE-HOWES "Just a point of clarification. First, has staff changed their recommendation from one driveway along Maple to none?"

CARROLL "Yes. On Item No. 5, we are recommending no access along Maple and two accesses along Bebe."

OSBORNE-HOWES "And then secondly, what did the District Advisory Board approve? Was it 'NR' or 'LC'?"

CARROLL "They approved 'NR'."

HENTZEN "Barry, Bebe going north from Maple probably goes north to Douglas. Then probably on, but all I am thinking about is that there is not a real chance that Bebe will ever be an arterial street of any kind?"

CARROLL "I don't think so."

HENTZEN "Okay."

MCKAY "Did the Traffic Engineer say anything about the south entrance and its distance from Maple Street?"

CARROLL "It probably would have to be up farther north from Maple."

MCKAY "If you say two openings and there is no designation of distance from Maple, he could put it right on the corner."

CARROLL "I thought you might ask that question so I checked with Public Works. It will have to be a certain distance north of Maple. Eighteen to 20 feet, I believe."

CARRAHER "Are there any further questions of staff? Thank you, Barry. Would the applicant like to speak to this issue?"

ALLEN HERMAN "I am here on behalf of the applicant, Larry Muller. Mr. Muller lives at 11416 West 1st Street Court here in Wichita. The property at 4902 West Maple has been owned by Mr. Muller and his wife, they have been purchasing it on contract for about the last nine years. They have been using it as a rental during that period of time.

Mr. Muller would like to develop the property, and as noted by Mr. Carroll, we have asked for 'LC' Light Commercial zoning. The staff has recommended that it be 'NR' as opposed to 'LC'. Everything Mr. Carroll said is accurate. The only concern we have is that we believe it is appropriate that the property be developed as 'LC' rather than 'NR'. I might point out that there is no opposition that we know of from the neighborhood. Mr. Muller has been around and talked with some of the neighbors. The neighbor to the north has no objection other than he doesn't want a McDonald's in there. The neighbor two houses away to the west is the neighbor that you have a letter from. The neighbors immediately to the west are here today--Mrs. Fisk and Mr. McCabe. It is my understanding that they are here to advise the panel that there is no opposition to the rezoning to 'LC'.

As I understand it from the Advisory Board meeting last evening, June Bailey from the Orchard Breeze Association indicated that she knew of no opposition whatsoever. There was no one there at the meeting who opposed. Ms. Bailey pointed out the fact that most all of the neighbors in that area expect that the north side of Maple to I-235 is going to be commercial at some point in time. It is just because of the development of Towne West and what has happened to the east. I might also point out if you look to the east of the property, you have the mini-mart and all the way to West Street you have Light Commercial zoning and development along that road with, I believe, one exception. There may be a little enclave there somewhere. Obviously, at some point in time, all of that was residential and it has been, in the past, approved for Light Commercial, and it is Light Commercial.

The natural buffer, if there is a buffer, in terms of east/west commercial development is I-235. We would submit that making this property 'NR' as a buffer doesn't really make a whole lot of sense, whether it would be 'NR' or whether it would be 'LC'. How is this property any different from the property to the east of it? It doesn't appear to be, to me. You do not have any opposition from any of the neighbors that we know of, and the application has always been for 'LC'.

Probably, although the recommendation yesterday evening was for 'NR', and that is what the Advisory Board submitted at their meeting, chances are that had 'LC' been submitted, based on the comments that were made at the meeting and based upon the circumstances in the area, it is logical to assume that that would have been approved, as well. We have looked at the staff findings and would simply submit that in Finding No. 2, 'the commercial development would discourage residential use in the immediate vicinity'. I don't believe that is the case if you look at the area and what is happening there. It really doesn't need to be a buffer by making it 'NR' rather than 'LC'. It doesn't really make that much difference. There is no logical reason to treat this property any different than the property to the east has been treated in the past. As far as the land use guidelines and the Comprehensive Plan, it is difficult to understand how the Comprehensive Plan finds it appropriate for 'LC' up to Bebe Street on the east, but yet the Comprehensive Plan does not find it appropriate to the west of Bebe Street.

So we would ask that this body consider that the application of 'LC' as applied for be approved. If necessary, the applicant would be more than willing to provide for a Protective Overlay that would take care of any concerns that the Board may have with regard to the character of the neighborhood, for instance a Protective Overlay that would restrict uses to exclude taverns, adult book stores, drive-in restaurants, or anything of that nature. But in effect, to allow that property to be zoned the same as the properties to the east, which only seems to be the logical thing to do. Mr. Muller is here and should any of you care to ask him any questions, he would be more than happy to speak with you."

WARREN "I have a question. Just out of curiosity, it would seem to me that what you have there is about a 180 or 190 foot lot. I guess I am wondering why you just asked for half of it? From the depth of that lot, it would appear that you would want the whole lot."

HERMAN "Sir, we are asking for the whole lot."

WARREN "Oh, well, it didn't show up that way on the way we have it drawn here. This site plan calls out for 95 foot. So you are asking for the whole lot to be zoned then?"

HERMAN "That is correct, sir."

WARREN "Oh, okay."

BARFIELD "Sir, what is between Bebe Street and I-235?"

HERMAN "As I understand it, it is all single-family residential on the north side. On the south side, it is all commercial, Towne West."

KROUT "Can you tell us what uses you feel like you need to market this property for under 'LC' that are not available under Neighborhood Retail district?"

HERMAN "Let me refer to my list. Actually, there are two considerations with 'LC' as opposed to 'NR'. As I understand it, your side setbacks are a little less, five foot less, with Light Commercial as opposed to Neighborhood Retail. I don't have a comparison between the two here in front of me because I know that most of your 'NR' uses are subsumed within the 'LC' zoning.

But let me just say that generally that the 'LC' classification is certainly going to allow more latitude with regard to what can be put in there, and if there is a concern as to certain uses that that property might be put to, I am sure that Mr. Muller would be more than willing to agree to a Protective Overlay that would address any of those concerns. The fact is that not only does he intend to develop the property, but the property is certainly going to be more marketable, not only now, but in the future, depending on what happens to the west, if it is Light Commercial as opposed to Neighborhood Retail."

CARRAHER "Are there any further questions for the applicant? Thank you, sir. We will move to the gallery. Is there anybody in the gallery who wishes to speak in favor of the issue? Seeing none, is there anyone in the gallery who wishes to speak in opposition to the issue? Then we will move it back to the Commission. Are there any comments or questions from the Commission regarding the issue? What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area has mixed uses with single-family residential uses to the west and north with a mini mall and car wash further to the east that are zoned "LC" and the Towne West Shopping Center to the south that is zoned "LC." Currently, there is considerable commercial development taking place along Maple, progressing west of West Street. The most directly impacted properties by the proposed development are several residential properties zoned "SF-6" Single-Family Residential located to the west and north, where the character of development is that of predominately single-story dwellings. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-6" Single-Family Residential and could be developed for single-family use. This proposed commercial development would discourage residential use in the immediate vicinity. Extent to which removal of the restrictions will detrimentally affect nearby property: The suggested "NR" Neighborhood Retail zoning designation would reduce the intensity of commercial uses allowed on the application area. With these restrictions, the retail uses could serve as a buffer between the residential uses to the west and north and the commercial activities concentrated south of the application area (Towne West Shopping Center). Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the 1999 Comprehensive Plan identifies the general location as appropriate for "Low-Density Residential" development. This residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivisions and planned developments with a mix of housing types that may include townhouse and multi-family units. Schools, churches and other similar uses are also found in this category. The request does not technically conform to the Land Use Guidelines as suggested in the Comprehensive Plan. The Comprehensive Plan indicates, however, that commercial uses are appropriate uses directly to the east (mini mall and car wash) and south (Towne West Shopping Center). Impact of the proposed development on community facilities: This site has one access from Maple, a four-lane arterial, and a private drive off of Bebe, a residential street. Traffic volumes for 2000 are 20,772 (ADT) along Maple. Traffic volumes projected for 2030 are projected to be 26,009. Maple Street has been widened for access to and from Towne West and a fifth lane storage turning lane is in place. The applicant is being required to dedicate, by separate instrument, an additional 10 foot of right-of-way along Maple. The presence of a single point of access onto Maple could pose potential traffic problems for turning, both into and out of the site. There will be two points of access along Bebe. The applicant is being required to close the access along Maple.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. APPROVE the zone change (ZON2000-00038) to "NR" Neighborhood Retail subject to replatting within one year and subject to the following conditions:
1. The application area shall be restricted to those uses allowed as permitted uses in the "NR" Neighborhood Retail zoning district.
 2. Building heights shall be limited to 25 feet in height.

3. The applicants will comply with noise, setback and height compatibility standards, zoning screening and landscaping requirements
4. The applicants shall submit a landscape plan to the Director of Planning for approval prior to development.
5. The application area will have two points of access along Bebe; there will be no access from Maple.
6. The applicants shall dedicate 2 feet of additional utility easement along the northern perimeter; 2 feet from the south side of the existing 8-foot utility easement, thus upgrading this utility easement to current city standards (10 feet).
7. The applicants shall dedicate, by separate instrument, 10 feet of additional right-of-way (ROW) along Maple.
8. Outdoor speakers and sound amplification systems shall not be permitted.
9. Prior to publishing the resolution or ordinance establishing the zone change, the applicants shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.

LOPEZ moved, **PLATT** seconded the motion.

MILLER "Just a quick clarification. Staff will be recommending replatting this so that we can handle those issues at the platting stage."

HENTZEN "I am not going to vote for the motion. This was applied for and advertised for Light Commercial. There was no opposition shown at the D.A.B., in fact they voted 6-0 in favor of it. No opposition showed up today, so I don't think we ought to do what has been proposed."

WARREN "Do you have a substitute motion?"

MICHAELIS "My question is a point of order. Do we not have to vote to deny this request and then substitute it with an 'NR'?"

KROUT "No, you can make this equivalent to a substitute motion. You can make a motion for the zoning requested or any lesser zoning."

MICHAELIS "Okay. Thank you."

OSBORNE-HOWES "I just have a question. I want to check back on something that Mr. Hentzen said. Is it right that the D.A.B. voted to approve 'NR', but not 'LC', is that right?"

CARROLL "That is correct. The D.A.B. voted to approve 'NR' and not 'LC'."

HENTZEN "Sorry about that."

WARREN "Were they given the choice to vote for either?"

CARROLL "Yes."

CARRAHER "Are there any further questions or commentary with regard to the motion?"

WARREN "I feel like Commissioner Hentzen in this case. This is commercial. It is commercial in every way. Now if we want to set up some kind of a restriction, a landscape restriction that would be special to the north, I would have no problem with that, but I certainly see no reason why we should restrict this with the commercial that is around this. I just can't believe that we are going to do that, particularly with the application as it is and our ability to screen. We can screen that away from people to the north. I will be opposed to the motion also on the basis that we will probably have a substitute motion."

CARRAHER "Are there any further questions or comments regarding the motion?"

KROUT "I would like to respond that we used to not have a Neighborhood Retail zone and that is why there is not a lot of neighborhood retail zoning to the east of here on Central. That is all older zoning when we only had Limited Commercial category. Later on in your agenda, you are going to have a couple of cases with Community Unit plans where we have tried to create buffers with limited uses, either Neighborhood Retail uses or something similar to that, where it is immediately adjacent to single-family. Whether it is Greenwich and 13th Street or a case like this, I think there are certain uses that we think, unless we have a real site plan and we are clear on what we are doing, that the Neighborhood Retail category we think is more appropriate adjacent to the area to the north that is going to remain single-family."

The uses that are not permitted are fast-foods, drive-through restaurants, which the owner said that someone objected to already; convenience stores, service stations, auto repair shops and similar auto related uses. It allows the same kind of strict retail development as is in the mini-mart to the east and that I think you generally would expect a tract like this to be placed to. I think that when you are looking for more intensive use, like a drive-through restaurant, that there ought to be special care, a site plan, a clear indication of how the use was going to be, and then maybe special protection, and you look at it on a case-by-case basis. But we design the Neighborhood Retail district to be a better district, more compatible, lighter uses, when it is immediately adjacent to single-family. You can decide it is not necessary because you think no one objects in this case, but it is something that we have tried to apply and we think it is appropriate in this case, too."

WARREN "We are going to do two things, though, Marvin. We are going to limit his market, we know that, which would have a depreciating affect on this lot. He is all around heavy commercial, all around there. I would call this a heavy commercial area. So I disagree. I think we ought to give the man the opportunity to market this property. Now, if he has offered to set up a Protective Overlay to take away those businesses that might be offensive to the neighborhood, then I think we ought to accept that. But I see no reason why we should deny him what he has asked for here."

OSBORNE-HOWES "I have been thinking about this, too. The truth is, what he is around or what he is just to the west of is Neighborhood Retail. If I am correct, that is basically what that center is that was developed when we didn't have Neighborhood Retail zoning. That is why we created that zoning--I guess you would call it Light Commercial, but ultra-Light Commercial that would not allow for the more intensive uses. Especially because this will probably move onto Bebe, so I think we have to be real careful with the level of commercial. I am not sure that it is really going to limit him at all. I have been going back and forth in my mind about this. That is why we created 'NR' zoning. So I think it is appropriate and I will probably support the motion as a result of that."

BARFIELD "I have a problem also with removing the access on Maple. I don't see that being contingent with everything else that is going on out there on Maple. Everybody else has access off of Maple."

CARRAHER "Are there any further questions or commentary in regards to the motion? Seeing none, we will move into a vote."

VOTE ON THE MOTION: The motion carried with 9 votes in favor (Platt, Lopez, Osborne-Howes, Johnson, Michaelis, Warner, Garofalo, McKay and Carraher) and 4 in opposition (Warren, Marnell, Barfield and Hentzen).

9. **Case No. CUP2000-00030; DP-203 Whispering Brook C.U.P. Amendment #1** - Nestor R. Weigand, Jr., and Deborah H. Freeman (owners); Ross G. Tidemann and George E. Laham II (contract purchasers); P.E.C. c/o Rob Hartman (Agent) request the amendment of DP-203 Whispering Brook C.U.P. to adjust the number, sizes, and uses of parcels, to adjust access control, and change signage restrictions, on property described as:

WHISPERING BROOK COMMERCIAL ADDITION, Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of 37th Street North and Woodlawn.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting that DP-203 Whispering Brook C.U.P. be amended to reduce the C.U.P. from five parcels to four parcels, as well as proposing changes to uses, location of access openings, and signage restrictions.

Currently, the C.U.P., which is 11.7 acres in size, has one large parcel, plus a small parcel on the northwest edge of the C.U.P., a small parcel on the southeast edge of the C.U.P., and two parcels near the intersection of 37th and Woodlawn. The proposed amendment would eliminate one of the parcels near the intersection, and shift the parcel on the northwest edge of the C.U.P. away from the adjoining residential development by 145 feet. The maximum building coverage would remain at 30 % and the floor area ratio would remain at 0.35. Building height would remain at 35 feet.

The existing C.U.P. permits only those uses listed for each parcel. The applicant has proposed that this be reversed to allow all uses in the "LC" zoning district except for the following excluded uses: adult entertainment establishments, group homes, group residential, correctional placement residences, private clubs, taverns and drinking establishments.

Also, the amendment would prohibit the following uses within 145 feet of the south and west property lines: convenience stores; service stations; free-standing fast food restaurants; and vehicle repair, limited. Currently these uses are prohibited within 175 feet of the south and west property line. The effect of the change is to reduce the buffer distance between these uses and the nearby residential areas by 30 feet.

It is our understanding that a Dillons Store is under consideration for the main parcel, Parcel 4, and a fuel outlet on Parcel 3. Also, a nursery/garden center is being requested for location in the parking area of Woodlawn along Parcel 4. The nursery/garden center is a "Conditional Use" in "LC" when it cannot otherwise comply with outdoor storage and display requirements of the "LC" district. The request for a "Conditional Use" approval for the garden center is included as part of the C.U.P. amendment.

The Unified Zoning Code requirements of Section III-D.6.z for nursery/garden centers stipulates that they should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates storage/display areas, as well as establishing other conditions MAPC deems necessary for the protection of adjacent property, and including the maintenance of property. The nursery/garden center would occupy approximately 0.24 acre, and be surrounded by a temporary fence enclosure that would not be chain link. The greenhouse would be 21' X 72" in size. The C.U.P. drawing does not provide a specific location for the greenhouse. Ingress/egress would be via the southern entrance to the C.U.P. The use would be restricted to operating no more than 120 days per calendar year.

In terms of changes to the sign provisions, the existing C.U.P. allows a maximum of seven monument-style signs, limited to 20 feet in height and 150 square feet in size. The amendment would replace this provision with standard sign code provisions, which would allow signs to be 25 feet in height and a maximum of 300 square feet in size. The total amount of signage would be based on 0.8 times the lineal frontage, which would be approximately 100 square feet more than currently permitted. The applicant has agreed to add language to require signs to be spaced a minimum of 150 feet apart regardless of parcel lines or ownership. Another provision that would be desirable is to prohibit building signs on the rear façades adjacent to the south and west property line.

The application area is currently vacant. There are single-family residences to the south and west that are part of Whispering Brook Subdivision. Enterprise car rental and Chisholm State Bank are located on the northwest corner of the intersection. These businesses are located within the jurisdiction of Bel Aire. The northeast corner has a Sonic and a Coastal Mart. The southeast corner, DP-128 Brush Creek C.U.P., is approved as a commercial/residential development. The parcels at the intersection are vacant, although one commercial parcel along Woodlawn is under development with a small commercial strip center. LaCrosse, a large apartment complex, is located to the east of the application area across Woodlawn.

CASE HISTORY: DP-203 Whispering Brook C.U.P. was approved in January 1992. The application area was platted as Whispering Brook Commercial Addition in August 1992.

ADJACENT ZONING AND LAND USE:

NORTH: "B-1" General Commercial (Bel Aire)	Commercial, residence
SOUTH: "SF-6"	Single-family residences
EAST: "SF-6";	Single-family residences
WEST: "LC"; "MF-29"	Vacant (retail building under construction), apartments

PUBLIC SERVICES:

The property is located along 37th Street North and Woodlawn. The property on the south (Whispering Brook) is in the City of Wichita and the property north of 37th is in the City of Bel Aire. However, the right-of-way for 37th is under Sedgwick County jurisdiction.

In 1997 average daily traffic on 37th was 5,638 cars per day. This is projected to increase to 12,476 ADTs in 2030. 1997 traffic volumes on Woodlawn were 10,914 cars per day. Traffic on Woodlawn is projected to increase to 18,028 ADTs in 2030. The kinds of commercial uses under consideration for this parcel are expected to generate fairly significant volumes of traffic. The supermarket and fuel outlet alone could be anticipated to generate up to 8,000 trips per day.

Currently, Woodlawn is improved to five-lane standards in front of the C.U.P. 37th remains improved to a two-lane county road standard except at the intersection with Woodlawn, where intersection improvements widened 37th for a short distance to four through lanes and one left-turn lane. The widening of 37th from Woodlawn to Oliver was previously in the Transportation Improvement Program, but local funding for the project was not forthcoming, and it was removed in favor of the improving Woodlawn from 37th to 45th.

Water and sewer services are available to serve the property.

CONFORMANCE TO PLANS/POLICIES:

The Wichita Land Use Guide of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area for "commercial" use. It is typical of the neighborhood shopping center ranging from 4-15 acres in size, typically anchored by a supermarket located at one or two corners of any arterial street intersection.

RECOMMENDATION:

The requested changes to parcel sizes, configuration, and uses does not alter the overall development pattern, except that it adds a nursery and garden center to the main parcel and reduces the buffer between the more intense commercial

uses and the residential districts from 175 feet to 145 feet, and it impacts alignment of the openings with the existing openings across 37th Street North.

The requested sign changes would increase the height, and allow much larger signs. In comparison, the nearest C.U.P., DP-128 Brush Creek, is limited to 140 square feet in size for freestanding signs, and they must be spaced a minimum of 150 feet apart. DP-228 Woodlawn Power Center, the C.U.P. that is located south of Brush Creek at the northeast corner of Woodlawn and K-96 has similar size restrictions, and sign height along Woodlawn is limited to 20 feet.

Based on the fact that this is a neighborhood shopping center that should be compatible with the surrounding residential area and the sign limitations on nearby C.U.P.s, it is recommended that existing sign limits of 150 feet per freestanding monument sign be maintained. Maximum height would be 20 feet, except that one freestanding monument sign on Woodlawn and one on 37th to serve Parcel 4 would be allowed to be 25 feet. The number of signs would be reduced from seven to six since one parcel has been removed from the C.U.P. (a suggested definition of a monument sign, until the Sign Code is amended, is that it be "a detached sign where the width of the base of the sign is at least ½ of the width of the widest part of the sign face, or where the base consists of two or more supports where the sign face is not more than two feet above the average grade of the ground. The materials of the base shall be one of the following: masonry, wood, anodized metal, stone or concrete. A monument sign shall harmonize with the architecture of the structure or complex it serves and be constructed of materials consistent with the same.") Also, building signs on rear facades along the south and west property line should be prohibited. These sign provisions make the neighborhood shopping center more compatible with its nearby residential neighbors.

The existing C.U.P. allows three points of access on 37th and on Woodlawn. One access point on 37th is only 100 feet from the intersection, which is closer than should be permitted. The remaining two access points are located so that they can serve the three parcels with frontage along 37th. Therefore it is recommended that the opening nearest the intersection along 37th be removed. In addition, when the location of Parcel 3 was shifted from the property line to the middle of the site to keep the fuel outlet farther from the residences, it blocked the previous alignment between the major opening on 37th and the street across 37th to the north, Hillcrest.

There are also three points of access on Woodlawn. The southernmost location serves Parcel 1 and Parcel 4, as well as the proposed location of the nursery/garden center. It is across from the driveway to the Brush Creek retail building. The total distance between this southernmost access point and the corner is only 600 feet. This is not adequate to handle three major openings. It is recommended that the northernmost opening be eliminated.

Traffic improvements recommended to serve the development include extending the center left-turn storage lane westward along 37th to a point in front of Parcel 3, extending a center left-turn storage lane on Woodlawn southward across Parcel 1, and adding accel/decel lanes to serve all parcels. These improvements were previously guaranteed at the time of platting, but will probably need to be replaced by a new guarantee at time of replatting. The agent has indicated that they intend to replat the property because of the changes in platted access, lot lines, platted setbacks and the location of easements.

The agent has agreed to several changes from the original submittal. These are to change the language on permitted uses, landscape code, and screening of work areas to be consistent with current zoning and landscape code, and to add a requirement for a pedestrian walk system. These changes will be incorporated into the revised C.U.P.

Based on these comments and the information available prior to the public hearing, Staff recommends the request for Amendment #1 be APPROVED subject to replatting within one year and subject to the following conditions:

1. The following transportation improvements shall be provided:
 - a. Extend the center left-turn storage lane on Woodlawn to the south property line.
 - b. Extend the center left-turn storage lane on 37th to the west property line.
 - c. Provide continuous accel/decel lanes with appropriate engineering standards to serve openings to all lots.
 - d. Align the southern opening on Woodlawn with the existing driveway on the east side of Woodlawn.
 - e. Align the major opening on 37th Street North with Hillcrest or provide a minimum separation of 100 feet between center to center of these openings.
2. Eliminate the two openings closest to the intersection on both 37th Street North and Woodlawn.
3. Replace General Provision #6C with the language stating: "A total of six freestanding monument-type signs shall be permitted. Each sign shall not exceed 150 square feet per sign face. The maximum height of signs shall be 20 feet, except that the maximum height for one sign for Parcel 4 on Woodlawn and one sign for Parcel 4 on 37th Street North shall be 25 feet. Each sign shall be space a minimum of 150 feet apart regardless of parcel lines or parcel ownership.
4. Add General Provision #6D: "No building signs shall be permitted on the rear facades of buildings along the south and west property lines.
5. Change General Provision #17 to state "All buildings shall have the same predominate exterior building materials with consistent architectural character, color and texture, and consistent lighting design (fixtures, poles, lamps, etc)

as approved by the Director of Planning. Metal shall not be permitted as a predominate exterior building material for any building on the site."

6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
8. All property included within this C.U.P. and zone case shall be replatted within one year after approval of this C.U.P. by the Governing Body, or the case shall be considered denied and closed.
9. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by MAPC, or the Governing Body, if required, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has commercial uses at the intersection of 37th and Woodlawn, including a bank, convenience store, car rental agency, and a small strip center under construction across Woodlawn. Low to moderate density residential uses are established to the west and south of the C.U.P. Higher density residential uses are located across Woodlawn. The property is zoned "LC" Limited Commercial, which is appropriate for the proposed uses for the C.U.P.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed in conformance to the existing C.U.P. plan. This amendment alters lot configurations to allow the placement of the fuel outlet and the nursery/garden center as additional uses to those uses already approved.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: With the buffer between fast food restaurants and other more intense commercial uses along the southern and western property line, restrictions in signage, and the screening and landscaping provisions to ensure compatibility with the nearby residences, the proposed amendment should not exert any significantly different effect on the adjacent residential development than the previous C.U.P. approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed amendment, as recommended, is in conformance with the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Access points, as suggested on the amendment and as approved on the C.U.P. are in conflict with the Subdivision Regulations and too closely spaced to provide good arterial traffic movements. As recommended with the reduced points of access and alignment of the openings to coordinate with existing drives, the impact of the proposed development should be improved from that previously approved.

GOLTRY "The requested amendment changes the configuration of the lots to reconfigure somewhat the main parcel, which is, we understand, a potential Dillons site. We are moving this northwest-most parcel, which was on the edge of the Whispering Brook residential area inward 145 feet. It is the proposed location of a Dillon's Fuel Outlet. There will be one parcel now at the at the corner of 37th of Woodlawn instead of two and one parcel will remain on the southern boundary, adjacent to Whispering Brook for an out- parcel.

It is our understanding, and there are two applicants here; that Dillons is the proposed user for the larger area and the other parties have the two remaining parcels on the north and south edge of Woodlawn. There are some other adjustments that were requested as part of this amendment for Whispering Brook. Some of the other adjustments were a tweaking of the proposed uses that were allowed within the areas that were adjacent to the residential districts.

When the application came in originally, they requested the elimination of convenience stores, service stations, fast food restaurants within 145 feet of the west boundary. Last week, when we were discussing the matter, they had agreed to also do that along the 145 feet along the southern boundary. Yesterday, I had an additional requested change from the applicant and that is that this buffer zone, instead of being 145 feet would be only 100 feet for this one parcel (pointing to parcel) on the southern part here. I will let the applicant speak some more to you about that in his presentation.

In terms of surrounding land uses, there is residential to the south and the west. To the north we have some kind of exurb-type land still, but we have alot more development than shows up on our aerial photo. That is four years old. Now, directly across the street here is Enterprise, a car rental agency. They have a building along the front and then their storage lot behind. We have the Chisholm State Bank on the corner and a Sonic Drive in on the northeast corner. I don't believe that shows on this aerial either. And there is a Coastal Mart at the northeast corner; I don't believe it shows. The Whispering Brook Commercial CUP and residential CUP to the east, DP-128, which is a largely vacant tract. There is development going on in this particular area for a small strip center, and then within the last two years, this area (indicating to the southeast) was developed with the LaCross Apartments.

There are revisions to the site plan that the applicant has already talked with staff about. I was just speaking to the agent prior to the meeting and he has another revised site plan, which I believe he has handed out to you as we started the case.

In terms of changes and how we feel that this amendment would affect things, the staff's primary concern is on access management and we have Jamsheed Mehta here today to talk with us more about that. The applicant is proposing six openings. We have requested four openings, based on the length of frontage and its location with respect to access openings on the other streets. I will let Jamsheed go more into detail on that with you.

In terms of signage requests, they had requested some additional signage. We have recommended, and I believe they are in agreement with our recommendation, that they be allowed six monument signs, four of which would be 20 feet in height, one for each of the parcels and then two 25 feet in height, all 150 square feet in size. That is contained in the recommendation sections.

In terms of other recommendations, there are a lot of smaller recommendations. One has to do with building materials. I believe that the applicant and staff are in agreement that they would not use metal as a predominant building material on any of the sides of the building. That was a concern that was expressed by neighbors at the D.A.B. meeting on Monday night. Rob (Hartman) will speak more with you in detail on that as that relates to the kiosk for the fuel outlet, because he has some additional issues on the details on that. We are in agreement with the applicant to adding a pedestrian walkway provision to link the arterial pedestrian system on 37th and Woodlawn with the large buildings on the parcel.

At Monday night's D.A.B. meeting, you have a very short summary that you just received. There were a number of residents to speak and to listen. There were probably 20 residents present that night, I think. Several of them are here today to speak, too. I will highlight some of the issues that they brought out. One of them relates to drainage as it affects Whispering Brook and I have asked Vicki Huang to come to answer questions about drainage. Some of the other issues that have been brought out and they have been talking with Dillons about are the height of the wall on the rear of the Dillons building, lighting, the density of the landscaping along the rear of the Dillons building. I believe the agent and the neighbors have been in communication since Monday night's meeting, trying to work out some issues on that score.

So basically I would say that staff is in favor of amending the application, it cleans up a lot of things. We are not in favor of six access openings. I would like to, at this point, ask Jamsheed to comment on the access."

GAROFALO "Donna, would you explain this reference to the reduction by 30 feet of the buffer of distance to the residential area?"

GOLTRY "The original C.U.P. restricted those uses. As you know, our old C.U.P.s used to say what you could include, and now our C.U.P.s mostly say what you exclude, but what it boils down to is our list of uses that we are not going to allow, which are things like the service stations and convenience stores used to be eliminated within 175 feet of the boundaries on the south and west. Now they have requested that they be eliminated within 145 feet of the west property line and the south property line, except for on Parcel 1, where it would only be restricted for the first 100 feet. It is a little complicated."

GAROFALO "I guess my question is why?"

GOLTRY "Why? Because they want to put the fuel outlet on the 37th Street side, and in order to make it work with their drive openings, I believe that this was what is driving the reduction in parcel size. Similarly, on Parcel 1, I think they do think they have the potential to market it to some of those types of uses that would otherwise have been excluded if it were the full 145 feet."

BARFIELD "The D.A.B. considered this, but they took no action, is that correct?"

GOLTRY "Yes. As you recall, when the D.A.B.s were initially set up, one of the things that was discussed is that they would be a body that would hear the cases and they would allow input from the citizens and input from the D.A.B. members and provide recommendations in the form of just 'general comments', rather than a vote 'up or down' to MAPC. Chairman Rogers, at the meeting on Monday night, chose to run the meeting that way so he has provided you with his input."

CARRAHER "Mr. Mehta, do you want to make your comments now?"

JAMSHEED MEHTA, Planning staff "Donna has already mentioned that we have a unit plan with four parcels and six access points, and it is not necessarily that relationship of parcel to access point that is the issue, it is the proximity to the intersection and the distance between the driveways which are at issue here.

For reference, I am following the applicant's latest site plan. That is the best way to follow along with what I am trying to point out to you. I will go in the order in which I think there are some issues. The more urgent situation, 37th Street first and the very first driveway that has been identified as a right-turn-only driveway. Looking at their original submittal of the site plan, that is approximately 100 feet, and it should be at least 150 feet for the first driveway for your 150 feet of access control. But if that were done, within 250 feet of the intersection would be a right-turn in/out kind of a driveway. This kind of a configuration, and I understand this is just a conceptual site plan, but if you moved a right-turn in/right-turn out

driveway even further north to meet those dimensions, then you are getting extremely close to the main driveway off of 37th Street.

That main driveway, on its own, doesn't quite match up with the existing street across. It is an offset. It is a funny offset. It is not significant enough to make it a safe type of an offset. So our recommendation was to either line up with that existing street to the north or have an offset up about 100 feet. Not that 100 feet is really a good dimension to have such an offset, but if we were to ask for any more, it would bring that main driveway closer to the intersection of 37th Street North and Woodlawn. Why we want that additional separation between 37th and Woodlawn, and the main driveway has to do with the fact that you are seeing traffic eastbound turning north at that center turn lane. That intersection is already improved. Cars are backing up and you would be using that same turning lane when it is extended and built as part of this project. To be backing into the end of the other queues that are being formed, which is westbound turning into Dillons; it is too short of a section to accommodate a major driveway so close to the main arterial intersection.

We have no problem with the fact that there is a third driveway far back. We are treating that as though it was, in fact, a service entrance, but it would also facilitate movements in and out of that fuel facility.

On Woodlawn, now, the first driveway shown south of the interchange is probably in the 250-foot range where beyond 250 feet you can have more than just a right-in/right-out situation. However, there are three driveways in a row. All three of these are on Parcel 4. The one further north would probably serve what appears to be Parcel 2. The proximity and the distances between these driveways are such that if you take the approximately 380 or 390 feet and split that between three full, regular driveways without any restrictions, then you are certainly not heading in the direction of what we would like to see as access control and access management. It is one too many driveways.

We have worked with the applicant's agent and discussed various issues and scenarios. Our proposal on Woodlawn is that for the two north driveways, replace that with one, approximately in the middle of where those two driveways are shown right now. One of their concerns has to do with the fact that if this is Dillons, their main concern was having a driveway right in front of their main door, lined up. If that is true, then you can always have a curved driveway if you absolutely need to do that. But why put that burden on driveway openings on Woodlawn because of a particular marketing way of thinking or whatever the philosophy might be about.

On the corner lot itself, the corner of Woodlawn and 37th Street, that is probably the more serious concern amongst all of the others right now. If it is a right-turn in/right-turn out, you would still have to move it further west of this location. If it doesn't have adequate controls to in fact, limit those left turns, then you are seriously into the operational zoning for the intersection. So our recommendation is two driveways on each street, full movement driveways at this time. Are there any questions?"

MCKAY "Jamsheed, I want to make sure what you are identifying. You are saying on Woodlawn there will be three openings between Parcel 1 and Parcel 2, and you are saying to cut that down to two, putting one just south of where they are showing one, omitting the one in the middle and leaving the one on the south that is already there?"

MEHTA "Correct."

MCKAY "And on 37th Street, which one are you talking about, the main entrance, leaving it there?"

MEHTA "Ideally, line the main entrance up with the existing street across on 37th Street. Depending on what flexibility there is on Parcel 3 to move things around for the fuel facility. If that is not quite possible, then increase the offset from what it is. It is more like a 50 or 60-foot offset, not good enough from a safety standpoint. Increase that a little bit. We would like to see more, but if you were to ask for more, it would be putting that main driveway even closer to the Woodlawn intersection. So we are suggesting to make that a 100 foot offset."

MCKAY "Okay. If you do that, then what are you going to eliminate? You want two and they show three on 37th Street."

MEHTA "There is a right-turn one which they are showing on Parcel 2. The one closest to the arterial street intersection. Our proposal is to eliminate that one. Not have a right-in/right-out at all going directly into Parcel 2 from 37th Street."

MCKAY "Slide the main one to the south, right?"

MEHTA "Yes, slide the main one to the east."

MCKAY "Okay, thank you."

CARRAHER "Are there any further questions for staff?"

PLATT "Is staff going to comment on the drainage questions, which we have some letters about?"

GOLTRY "The drainage issue came up at Monday night's D.A.B. meeting. They said the potential drainage problem arises somewhat from the residential neighborhood to the south. I feel that Vicki would be far more able to comment on that than I am."

PLATT "Let's have her comment, then."

VICKI HUANG "I am with City Engineering. I was contacted yesterday by residents in the residential portion of Whispering Brook about a possible drainage problem. I did a little bit of checking. The residential and the commercial were platted at about the same time. I pulled the drainage plan that we have on file. The majority portion of the commercial side was intended to drain through a storm sewer system across Brookview Street, which is that first residential street and ended up in a ditch that goes south. The original drainage plan did not really show a pond in that kind of triangle reserve area. The storm sewer was sized to handle most of the portion of the commercial that is going to drain to that storm sewer. There is a stop when we pave the street. A storm sewer stop left there to drain the existing field, but it is also intended, when it is developed, that the commercial property will extend a storm sewer to a facilitate their site drainage.

What it brought to our attention is that there is a pond constructed there. Apparently we don't have any record that anybody submitted a plan for that pond or for the structure. Apparently, and I am just guessing, the developer of the residential property put a water feature there and put a small weir to drain the lake.

There are some ditches that then drain it to the south through the park property. You can see that there is a big, big lake in the park property. From day one there was no detention requirement for either the commercial or the residential properties, but I think that the lake, from the description of the property owners, the aqua structure is not sized properly. I called the platting engineer, who was Poe and Associates for both plats, and he said that he did not design that aqua structure either. So all we have at this time is that it is not engineered and it could be not sized properly. That is about the situation here. I think it would be appropriate for the commercial developer, their engineer, to do an evaluation of this situation and see what all is impacted. We certainly don't want any property to be flooded with the additional run-off. Let them come up with a solution to solve this problem."

CARRAHER "Are there any further questions of Ms. Huang?"

PLATT "Would you suggest that we have a new drainage plan, or just an evaluation of the existing one, or what?"

HUANG "If they are going to re-plat, they will have to submit a drainage plan to take care of their own property, but I think there should be the an evaluation of off site drainage downstream. That should be made part of their drainage plan. There area couple possible ways to remedy the situation and make sure the flow can drain through."

CARRAHER "Are there any further questions of Mr. Huang? Thank you. Is there any further staff commentary? Would the applicant like to speak on the issue?"

ROB HARTMAN "I am with P.E.C. here on behalf of the applicant. I guess the best way to approach this, maybe, is to address the issues that we can agree on and then maybe go into the ones that we don't agree on and discuss those.

I have met with several of the neighbors. As far as the drainage goes, as Vicki said, it is a problem that we didn't create, but what I told the neighbors at this time is that if we replat the property, if they could get me some information as to what is existing there so that we could evaluate it, we will go ahead and evaluate it for them, and tell them whether we feel that the drainage is adequate for this area.

As Vicki mentioned, there is no detention required on our site, but if we do replat, we would do an additional drainage analysis to see how we would affect the neighborhood with that pond that somebody built there without approval. I think we can agree to do that. There was some concern by the neighbors about the Dillons store backing into the houses on the west and the wall requirement there. Right now, we have an existing C.U.P. on the site. It was developed in 1991. It has been platted, so we have had a C.U.P. and a plat. The situation we have today is that we have two buyers for the property. Dillons being one buyer, and does not need the entire 11.7 acres, so together with another developer, they have offered to buy the property. The other developer would be the one buying the reconfigured parcels 1 and 2. Dillons would be buying Parcels 3 and 4.

When we first knew about the situation, we went into Planning and said that Dillons wanted to buy the property and there would be a developer that would be left over with the remaining property. We've got the existing C.U.P., the way it is now, Dillons can actually fit on the existing C.U.P. the way it is. The developer can also live with existing C.U.P. the way it is, but it is not ideal in either situation, based on the proposed site plan that I showed you. The access drives do not line up with the existing plat or the existing C.U.P., and some of the parcel dimensions don't correspond with the site plan either.

Our intention originally was to clean up the C.U.P., provide a reconfigured C.U.P. that would have parcels that related to how it was going to be developed versus how it is platted today, and hopefully we weren't planning on changing a whole lot of things. A couple of things did come up when we did look at the existing C.U.P. We noticed that it did not allow Dillons to put their fuel facility exactly where they wanted it there on 37th Street. That is why we reduced the 175-foot setback for service stations on the west property line.

The developer who is going to be owning Parcel 1 wanted the option to have a fast food on Parcel 1 with a 100-foot buffer off of the site plan. The original C.U.P., which I prepared in 1991, was set up with 175-foot lot on Woodlawn, adjacent to the entrance to the residential, and it also had a 175-foot lot on 37th Street, adjacent to the residential. At that time, nobody knew what the residential configuration was going to be. Now that it is platted, we can see where the houses are situated, how they back into the site, and on the south side of the property, you can see that there is a main entry drive, there is a reserve, and there is about 100 feet that separate the first house from the actual south line of this property. So

we are proposing a 100-foot setback on Lot 1, which would give us about 220 feet of separation from any existing residences and that would permit us to put a fast-food restaurant there. We don't care about the convenience store or the service station, we are just asking for the fast-food use on that north 100 feet of Lot 1.

There is a proposed 8 to 10-foot masonry wall that would separate this. There is also, as you can see on your site plan, a landscaping and buffer requirement of one tree every 40 feet. So there are no houses actually backing into Lot 1. That was our reason for asking for the reduction of the 145-foot setback to 100 feet on Parcel 1.

Since we have two buyers, each buyer would like to have access to each of their parcels. That is why we have three openings on Woodlawn. We also have three openings on 37th Street. We could live with two openings on 37th Street by giving up that first right-in/right-out turn. But the openings on Woodlawn were pretty well tied down to those because each buyer wants to have direct access to each of their lots. They feel this is important for their marketing. If you have one access point drive adjacent to Lot 2 and adjacent to Lot 1, then Dillons would like to have their access point centered on their building, as you can see in that site plan.

We are in agreement with the staff comments, other than the access and one other little stipulation that Donna brought up. It was on the predominately metal building. The gas outlet for the Dillons store has what is called a kiosk. It is a 9 x 12 building that an attendant sits in from 7:00 a.m. until 7:00 p.m. This building has a pre-formed base to it. The upper half of the 9 x 12 building is all glass, the lower half looks like slump block, but it is actually a pressed kind of a metal. That was one stipulation that was in the C.U.P. about a predominately metal building not being approved. We would like to waive that requirement on just the kiosk building itself. The Dillons store itself would be of all masonry construction. There would not be any other buildings on the site with predominately metal in their configuration.

In talking to the neighborhoods, they were also concerned about in the existing plat and C.U.P., it is a requirement to provide a center turn lane the entire length of Woodlawn and the entire length of 37th Street. It is also a requirement to put in a continuous decel lane on 37th and Woodlawn. They are in agreement with that. The original C.U.P. in that standpoint hasn't changed. They also said they would also provide an extension down past the entrance into the residential property so that that entrance (pointing to Brookview) would also have a left-turn lane going into it. We think that that would also improve the circulation there on Woodlawn.

As far as moving the entrances that Jamsheed had mentioned on 37th and Woodlawn, if we start moving the one on 37th Street anywhere to the east, we start getting into the parcel that Dillons doesn't own and it would start taking away from the size of that parcel. We could possibly move it east just a little bit, but there is no way we could get 100 feet separation between our entrance and the entrance on the north side of the road. But if you look at the uses up there on the north side of the road, they are primarily industrial uses and that access coming out there is very, very minor. We don't see that as being a very high density traveled road by any means.

Also, if we were to eliminate the access onto Woodlawn adjacent to Parcel 2, then anybody that would be coming up Woodlawn from the south into Parcel 2 would have to go all of the way up 37th Street, turn left on 37th Street and come down the main entry and come in the back way to Lot 2. So we feel very strongly about leaving that entrance there adjacent to Parcel 2. Also, Dillons feels pretty strongly about keeping this same one in the middle of the three entrances.

Right now, we have kind of got them evenly divided; they are about 200 feet apart. There were three entrances on the existing C.U.P. We are not asking for any more. We thought that what we were doing was helping a little bit. We have moved the northern entrance south on Woodlawn from what the original C.U.P. has. I have a sketch here that shows the proposed site plan with how the existing parcels were laid out on the first C.U.P. and where the access openings are. We know it is not the ideal situation on access, but we have an existing C.U.P. there now with three access points that we think we have made it better than what we originally had."

CARRAHER "Are there any questions for the applicant at this time? Thank you, sir. Now we will move to the gallery. Is there anybody here to speak in favor of this issue? Seeing none, is there anybody here to speak in opposition to the issue? Please approach the podium and give us your name and address for the record."

SCOTT MATTHEWS "I live at 3745 Whispering Brook Court, which is right here (indicating) in the cul-de-sac. I am not really and truly opposed, but we are concerned about the drainage. We talked about that a little bit ago. We are also concerned about the development on Parcel 1. There was a proposal for fast food at the D.A.B. meeting we had the other night. The information was not provided to the homeowners that that was going to be a fast food restaurant. I know of four homeowners right along in that area that do not want a fast food restaurant right by their house there because the traffic does get congested on 37th Street as well as on Woodlawn in that area. The map is showing down here (indicating) where he has three access points off of Woodlawn. We have the Whispering Brook development entrance, right in that area (indicating) and he showed an access point right up in here (indicating). On this side over here, they are not showing any of the Claypool Photography or the apartments that have been added on that side. There are two more access points on this side of Woodlawn, on the east side. With these three over here, it is pretty congested. If we have three more, plus those two there and then we have the Whispering Brook entrance there. It is pretty backed up now. Our concern was when was that going to be widened to five lanes, and those were not taken into consideration based on map changes and sites we have seen so far, the two entrances on the Woodlawn east side. We are working with the developer on fencing and we are going to discuss 6 to 8 foot or 8 to 10 foot fencing as they mentioned up here.

We are also concerned about the water pressure. Up in this area of town, the water pressure is not exactly high. In the morning when everybody is running water up there, it is pretty low. Now we will have a Dillons plus the restaurants there.

They will be running water at that time of the morning, so we are concerned about the water pressure in the area. That is all of the main concerns. We do really like the idea of having a Dillons there. It would be a nice walk over to get our groceries, but we are concerned about the access as well as the fencing and the other fast food restaurant going into that area."

CARRAHER "Are there any questions of the speaker?"

BARFIELD "Sir, are you saying that on the east side there is an undeveloped parcel with two access openings?"

MATTHEWS (Indicating) "Right in here there is a building that is Claypool Photography and then just north of that there is an entrance that goes all the way around this way. It is a development of apartments; very, very nice apartments. And they have an access point right in that area. This lot right here is open just like ours was, available for commercial development, I believe. But they have an access point up here to the apartments, and they have an access point down here to their apartments, just like we do for our development up here and down south. It's just on the opposite side of the road."

CARRAHER "Are there any further questions for the speaker? Thank you."

JOAN KIRKPATRICK "I live at 3714 Whispering Brook Court. I am on the Whispering Neighborhood Association, but I am not speaking as a board member. I hadn't really gotten all of the information until I got here today, so I can't say that I am prepared. What I am reading here is talking about this Dillons store and the Fuel Outlet, getting about 8,000 cars per day traffic. To me, that doesn't sound Light Commercial. I am a small town girl, but that sounds like a lot.

And if you look at the parking lot down here....I mean, this is a big Super Dillons. I don't think that is Light Commercial either. As far as the Fuel Outlet, I'm sorry, but that doesn't seem like what I would want in my neighborhood either. Maybe you know this because you work on this board, but on both of those corners there are signs that say 'For Sale by Weigand'. So to me, it just seems like they are trying to develop this property and get as much as they can out of it. I don't think they are taking into consideration the neighborhood at all.

Those apartments the staff was talking about, that area was zoned for like maybe 100 apartment buildings. They pushed through and got in over 300 apartment units. It seems like that is what they are trying to do in our neighborhood, too, is overdevelop it more than what it is already planned for. Do you control Bel Aire? Because what they are talking about, like the Coastal Station and the Sonic, they are all in Bel Aire, not in Wichita. The area behind our development is Sedgwick County. I know that you can't really speak for what happens in Bel Aire, but the Enterprise Rent-A-Car that they mentioned, that gets like no traffic. Neither does the bank. The Coastal Station doesn't get that much traffic and neither does the Sonic. But I think this whole development they are talking about putting in will generate a lot of traffic.

I am a stay-at-home Mom, so I am there all day long. I'm not one of those people who gets to go away from home every day, so whatever they are going to put in there is severely affect my quality of life. I have a two-story home. My little boy's bedroom is on the second story in that corner, right over the parking lot. It is not the kind of development I think fits into the neighborhood, just because we have people living there day in and day out. I don't think I have any other points to address. Thank you."

BARFIELD "Are you saying you are opposed to the entire development?"

KRIKPATRICK "Really, I am. When I bought that property, they told me that Dillons was probably going to develop next to me, and I thought 'oh, great, a Dillons store. I won't have to drive clear over to Tallgrass'. But when I see this plan, I am just like, that is too much. It is too much to put right by our neighborhood. We've already got the big apartment complexes. It is Weigand that is trying to put in that little strip mall there. The only reason they aren't putting the Dillons store over there on the other side of the street is because they have already built that big huge apartment complex and now they are building the strip mall because they don't have enough room left to put the Super Dillons there. That is why they are wanting to put the Super Dillons on our side of the street. They don't have single-family dwellings over there on the other side."

CARRAHER "Are there any further questions of the speaker? Thank you. Is there anyone else in the gallery who wants to speak in opposition?"

TOM STYBR "I live at 6119 East Brookview. I am also a resident of the Whispering Brook residential subdivision. I don't really have any opposition. I am in favor of the staff recommendation and what you have heard from the Traffic Engineer. I have some additional information as far as the stormwater drainage issue. As I understand it, the pond which exists within Whispering Brook was already a natural feature before it was developed. I don't believe that the issue with the potential drainage problem is with the pond. I believe it is with the weir and its sizing. The applicant has already offered to possibly offer some engineering assistance in making sure that this is adequately sized. We would definitely work with the applicant in that aspect in getting that assistance.

As far as rectifying the situation, the Whispering Brook Homeowner's Association would have limited resources in fixing that problem. The weir itself exists on a boundary with a City park. We believe that the ditch that drains from the weir is possibly similarly poorly sized. We would ask for the assistance of the City Engineer in helping ensure that that is properly sized. That is all I have. Thank you."

CARRAHER "Are there any questions of the speaker? Thank you. Is there anyone else in the gallery who wants to speak in opposition to the issue? Seeing none, Mr. Hartman has a two minute rebuttal."

HARTMAN "I guess as far as the development goes that Mrs. Kirkpatrick was concerned about, the commercial development was there, I believe, before any of the houses were ever built, and the C.U.P. that is in place pretty much hasn't changed a whole lot other than we re-arranged some parcels and some access points, besides the addition of the fast-food restaurant on the north half of Parcel 1. So I think everybody was aware that there was going to be commercial development there when they built there. So I think it is just now coming to be a reality. I don't have much more that I can add for that."

I believe the gentleman spoke about the apartment access off of Woodlawn. I believe the access to the apartment site is south of the entrance into their residential neighborhood."

MATTHEWS (From the audience) "That's not correct. It is just to the north offset."

HARTMAN "Just to the north? Okay. It is just to the north of their entryway. The other access point is, there is a driveway that is constructed now and it looks like they are in the process of building a small strip center. But it doesn't serve anything at this time, but it is obviously going to serve some retail uses. That is all I have."

CARRAHER "Are there any other questions of the applicant?"

WARREN "Rob, over there on 37th Street. Did I hear you say that you would be willing to give up one drive on 37th Street?"

HARTMAN "That closest drive to the intersection. We would be willing to eliminate that one."

WARREN "Okay. Then you have three over on Woodlawn and you feel that those are all three very essential?"

HARTMAN "They are. The developers that own Parcels 1 and 2 feel that they need one access for each, and Dillons feels that they need a major access to their side. So we are stuck in the middle. We have two owners and each one wants access to each parcel. I think it would be a little bit conflicting if we tried to sell the corner parcel for any kind of a development and if they had to weave their way through the Dillons parking lot to get to it. We think that would cause as many traffic problems, maybe as eliminating the access point."

MICHAELIS "I want to ask you a question on that. This kind of bothers me with the access points, too. If I am sitting here looking at the one immediately to the south of Parcel 2 and I am looking at the one immediately to the north of Parcel 1, I have a hard time understanding why that wouldn't be suitable to get in and out for all of them. We sit around here and talk about shared accesses all of the time, and that is nothing more than that. That is Parcel 4 sharing with Parcel 2 and Parcel 4 sharing with Parcel 1. I don't see what doesn't work about that."

HARTMAN "I guess the fact that Dillons wants one coming right into the middle of their store."

MICHAELIS "I understand that, but the dentist wanted one, too."

HARTMAN "Yeah, and staff was saying that they didn't even like the one next to Parcel 2. They wanted to move it south. And we said that we couldn't change the size of that parcel and it doesn't work when we move it south. That is why we want to leave it where it is. And the one in the middle, Dillons feels that that is necessary for their store."

MICHAELIS "Let me ask you, if you had your 'druthers', and it came down to where you only had two on Woodlawn, would you rather have them adjacent to the other parcels?"

HARTMAN "It is hard for me to answer that because I actually have two different entities that I am trying to satisfy in the changes of the C.U.P. If I ask the developers that own the two pad sites they would say that they weren't going to give theirs up, and if I asked Dillons, they would say no, they wouldn't give theirs up. So, we are stuck with the three."

We have three there now. Really, we could live with the C.U.P. the way it is. It is platted, and we wouldn't have to do anything. But to change it, the only thing that we wouldn't be able to do, we would have to adjust where the fuel facility is located and the other change we had added here was since Dillons is doing these temporary greenhouses, I put a provision in that they could do a temporary greenhouse and that was an additional change that we had from the existing C.U.P. But other than that, the existing C.U.P. can work for us. It doesn't work well for us, it doesn't work well for planning with the access points the way they are now.

(Indicating) If you can see on this drawing, the existing C.U.P. now and the plat provide for one access point 175 feet from 37th Street and then one major opening in here, and then another opening that is just 100 feet north of the south property line. We are proposing to move this one up to 200 feet from the south property line, move this one about 200 feet from the north property line, so we think we are helping things this way from the intersection, but we've got the one stuck in the middle. And then, along 37th Street, the existing C.U.P. provides for complete access control on the first 100 feet. There is one opening in the next 75 feet; there is complete access control on the next 160 feet, and then one major entry up here, which doesn't line up with the street either.

So what we have now doesn't work very well, but what we are proposing, we think is a little better. It is not the best. If worse comes to worse, they are going to say 'forget the whole thing and we will just live with what we've got'."

OSBORNE-HOWES "Did the initial C.U.P. allow for a fast-food?"

HARTMAN "It allows for fast-food, except they have to be 175 feet away from the property line. And we had parcels there. That was before we had a residential designed development, assuming at that time, that there may be houses backing in to the site on the south. That was one stipulation. Now that we have a different site plan, we can see that we are not really backing houses into that lot. That is why we have asked for a consideration on that parcel."

OSBORNE-HOWES "Did your prospective buyers, the fast-food people you are talking to, are they the ones that chose? I mean you basically picked the site that is closest to the single-family."

HARTMAN "Yeah, really. When we were working with Dillons as far as laying out the site plan and we were trying to adjust the parcels so that they didn't need the whole 11.7 acres. So we tried to adjust it the best way we could to give them the best site and then end up with the best retail sites that we could. We have gone through several different schemes trying to shift things around to improve things, but this was the best one that we could come up with as far as Dillons facing Woodlawn and the way they need to have some access in the front. They like to have their parking out front where they are visible, so that kind of dictated how we ended up with the two out parcels."

OSBORNE-HOWES "I was just curious because it is still pretty close to single-family."

HARTMAN "It is, but remember that there is a reserve there. There will be a wall there and there will be some landscaping there."

OSBORNE-HOWES "I was just surprised that that is where you located that."

MCKAY "Rob, I know you did the whole plan, the reserve just south of this subject property, was there ever, in that plat, that they were supposed to put some plantings or anything in there?"

HARTMAN "I don't know of any. I don't know that there was anything required for that reserve for plantings. That was probably the intent of it, to have some landscaping there as you came in."

MCKAY "My second question is, since the drainage has been brought up, I can see that being a major problem. Just looking at this, it looks like that when the ground was platted, that there was actually a reserve to go down to the south and it has been recommended that that be engineered, or checked on to make sure that is large enough to carry that clear down to the pond. Are you willing to do that?"

HARTMAN "Well, what Vicki told me was that it had been designed and engineered for a swale through there."

MCKAY "She said there was a stub underneath the street that was undersized."

HARTMAN "Well, there is a stub that goes into the commercial property now that has been upsized to handle the drainage from the commercial."

MCKAY "Okay, but if you have to improve it or make it larger or something like that, you are willing to do that?"

HARTMAN "There is no problem on that end of it. The problem is in the residential reserve, as you get across the street. That is where the problem is."

MCKAY "I understand that, but I am saying that in the plat to the south in the residential, there is an easement going through there going through Reserve D. The reason why that is there is because to take care of the drainage problem. I am saying to you if it is undersized, are you willing to get engineers, get it sized and build it?"

HARTMAN "Well, what I mentioned to the neighbors is that we would analyze what they have and tell them whether it was undersized or not. Not that we would go through engineering to do it, it is not our responsibility. Doing the actual work and engineering it?"

MCKAY "Is your answer no?"

HARTMAN "What was the question?"

MCKAY "The question is this. Vicki said that the stub coming into your property was undersized."

HARTMAN "That is not right. It is sized correctly."

MCKAY "Okay. But going underneath the street, there seems to be a problem of the drainage, when this property drains to the south, getting through the residential."

HARTMAN "That is correct."

MCKAY "It is very obvious, according to the plat that is around this area, that they have provided, in the southwest corner of this piece of property, to get the water out of that commercial piece of property. My question to you is this, will you pay to have it engineered to make sure that there is size enough to take care of your property, because that is where it is supposed to go, and if it is not, will you pay for the improvements? To get it out of your property, down through either into the small pond or into the public pond to the south."

HARTMAN "That is a simple answer because Vicki has already told me that it is sized correctly. So there is no engineering necessary for that portion of it. What the problem is is that the developer or somebody has diked up the drainage way in the residential portion of the property that keeps this water from getting out of the neighborhood."

MCKAY "I know what the problem is. My question is, if there is a problem will you fix it? Will you pay to fix it? That is my question."

HARTMAN "Oh. No."

CARRAHER "Are there any further questions of the applicant? Thank you. We will move it back to the Commission. Is there any commentary from the Commission?"

BARFIELD "I would like to ask Donna a question. In your opening statement, I think you indicated that there was initially neighbors that didn't want any gas stations on that intersection."

GOLTRY "Gas stations were initially not allowed on the two parcels nearest the Whispering Brook residential area. That would be the parcel on the northwest corner and the south corner. But they have always been allowed on the very intersection corner, kind of across from where Coastal is."

BARFIELD "Okay. And as I understand it, this Fuel Outlet is not properly located. Is that right?"

GOLTRY "On their existing approved C.U.P., the parcel that they have closest to Whispering Brook on the west, they couldn't locate the Fuel Outlet there. That is correct."

CARRAHER "Is there any further commentary from the Commission? Seeing none, what is the pleasure of the Commission?"

MCKAY "I can't support this plan, the way it is presented today, without knowing about the drainage situation. As far as the opposition from the neighbors, when they moved in, they knew that this was commercial zoning and that there was going to be something like that, so I discount that particular part of it. But I do have a concern about the drainage. As far as the approaches are concerned, the existing street on 37th Street carries hardly any traffic whatsoever, so I don't have a problem with the offset, the way it is designed on 37th Street, the main entrance. But I do have a real concern about the drainage, and the lack of support from the applicant to seek to get it taken care of. That bothers me a lot."

OSBORNE-HOWES "I guess I have some concern about the three entrances on Woodlawn, although it sounds like he is willing to eliminate one. Am I right on my notes? No? Okay."

And I am also concerned about the fact that the new uses on some of these parcels are located close enough to the single-family residences. So, I guess part of me thinks that I will send this back, or defer it and let the applicant take another look at it. That is kind of where I am at right now."

PLATT "I agree with what has been said about the drainage. I think we have to find out what the problem is and how we are going to solve it. It seems to me that with everything we have been looking at in terms of traffic development says that Woodlawn and 37th Street are going to become busier and busier. We are going to see both of them improved in the next decade. It seems to me that now is the time to properly design access controls on this very important intersection."

And I am inclined to think that we should pay attention to our Traffic Engineering folks. Before we make a final decision, I would like to bring in the City's Traffic Engineering, too, who I suspect support what Jamsheed was saying. So, I have some very major problems here with this proposal."

WARREN "I guess I am having a lot of problems, Commissioner McKay, especially where these people didn't cause this drainage problem and where it is not evidenced, that I can see, that they are further major contributors to the drainage problem, why you are so tough that they ought to fix a problem that isn't their problem?"

I understand where they have agreed to go in and work with and be a gentleman about it, but for you to insist that because they are asking for something, we ought to give them that problem, I don't agree with at all. I am ready to make a motion.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses at the intersection of 37th and Woodlawn, including a bank, convenience store, car rental agency, and a small strip center under construction across Woodlawn.

Low to moderate density residential uses are established to the west and south of the C.U.P. Higher density residential uses are located across Woodlawn. The property is zoned "LC" Limited Commercial, which is appropriate for the proposed uses for the C.U.P. The suitability of the subject property for the uses to which it has been restricted: The property could be developed in conformance to the existing C.U.P. plan. This amendment alters lot configurations to allow the placement of the fuel outlet and the nursery/garden center as additional uses to those uses already approved. Extent to which removal of the restrictions will detrimentally affect nearby property: With the buffer between fast food restaurants and other more intense commercial uses along the southern and western property line, restrictions in signage, and the screening and landscaping provisions to ensure compatibility with the nearby residences, the proposed amendment should not exert any significantly different effect on the adjacent residential development than the previous C.U.P. approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed amendment, as recommended, is in conformance with the Comprehensive Plan. Impact of the proposed development on community facilities: Access points, as suggested on the amendment and as approved on the C.U.P. are in conflict with the Subdivision Regulations and too closely spaced to provide good arterial traffic movements. As recommended with the reduced points of access and alignment of the openings to coordinate with existing drives, the impact of the proposed development should be improved from that previously approved.) I move that we recommend to the governing body that the request be approved, subject to re-platting within one year and subject to the following conditions:

1. The following transportation improvements shall be provided:
 - a. Extend the center left-turn storage lane on Woodlawn to Brookview.
 - b. Extend the center left-turn storage lane on 37th to the west property line.
 - c. Provide continuous accel/decel lanes with appropriate engineering standards to serve openings to all lots.
 - d. Locate the major opening on 37th Street North as per Conceptual Site Plan.
2. Access:
 - a. The first opening west of Woodlawn on 37th Street North shall be closed.
 - b. There shall be two openings onto Woodlawn. The center opening, as per Conceptual Site Plan, shall be removed.
3. Replace General Provision #6C with the language stating: "A total of six freestanding monument-type signs shall be permitted. Each sign shall not exceed 150 square feet per sign face. The maximum height of signs shall be 20 feet, except that the maximum height for one sign for Parcel 4 on Woodlawn and one sign for Parcel 4 on 37th Street North shall be 25 feet. Each sign shall be space a minimum of 150 feet apart regardless of parcel lines or parcel ownership.
4. Add General Provision #6D: "No building signs shall be permitted on the rear facades of buildings along the south and west property lines.
5. Change General Provision #17 to state "All buildings shall have the same predominate exterior building materials with consistent architectural character, color and texture, and consistent lighting design (fixtures, poles, lamps, etc) as approved by the Director of Planning. Metal shall not be permitted as a predominate exterior building material on any façade for any building on the site, except that pressed metal material designed to appear as split-faced block, located on the lower half of a kiosk for a fuel outlet shall be permitted
6. Add to General Provision # 12A: except that the screening wall on the west property line parallel to and extending the length of the retail building on Parcel 4 shall be eight (8) feet in height."
7. A detailed Site Plan per Sec. III-D.6.z of the Unified Zoning Code for the nursery/garden center shall be submitted for approval by the Director of Planning prior to issuance of the permit for the temporary seasonal nursery/garden center shown on the C.U.P.
8. General Provision #13A shall be revised to state that landscaping shall be as required per the City of Wichita Landscape Code."

9. General Provision #15 shall be revised to state: "Loading areas, trash receptacles, outdoor storage, and docks in the C.U.P. shall be screened from ground level view. Screening of all trash dumpsters outdoor storage, and mechanical equipment will be constructed of material to match and preferably be connected to the buildings they support."
10. General Provision #20 shall be revised to remove the reference to "half-way houses." The restrictions on uses within 145 feet shall be for the west and south property line.
11. General Provision #21 shall be added to state: "Prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Director of Planning. This walk system shall link sidewalks along 37th Street North and Woodlawn with the proposed buildings within the subject property as determined necessary by the Director of Planning.
12. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
13. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
14. All property included within this C.U.P. and zone case shall be re-platted within one year after approval of this C.U.P. by the Governing Body, or the case shall be considered denied and closed.
15. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by MAPC, or the Governing Body, if required, or the request shall be considered denied and closed.

WARREN moved, **JOHNSON** seconded the motion.

KROUT "Does that include subject to re-platting, which the applicant agreed to?"

WARREN "Yeah."

KROUT "As part of the re-platting, we would expect the drainage issue to be revisited."

WARREN "Certainly. It would. And if they are contributing to it, I am sure that they will be there to take their responsibility."

KROUT "When we go through that process, we can try to determine what the problem is and who ought to pave what. I think we do have an obligation to notify the homeowners' association about the plat when it gets filed so that they can see what the applicant is saying about the drainage plan and be a part of that discussion."

WARREN "But the C.U.P. as presented here does take into consideration their reduction in setbacks, so it would be approved as presented on the site plan."

CARRAHER "Does the second concur with the change to the motion?"

JOHNSON "Yes."

CARRAHER "Ms. Goltry, did you have something to add?"

GOLTRY "May I have a clarification? Mr. Hartman talked about a wall height behind the Dillons, and I wasn't sure where we stood on that issue and whether that was included or excluded. Right now, it stands at 6 feet and the neighbors had asked for it to be raised to 8 to 10 feet. We have talked around that issue, but we haven't gotten to it."

HARTMAN (From the audience) "It will be 8 foot adjacent to the Dillons store."

WARREN "Yeah. Okay."

PLATT "I have a question about the motion. Does the motion specifically pin down the two entrances on Woodlawn and the two on 37th Street, or will that be subject to discussion at platting?"

WARREN "My motion is to close that center entry to the Dillons store."

PLATT "And approve the other two exactly as they requested them?"

WARREN "The other two as on the site plan."

PLATT "And they will not be able to discuss those locations in the platting process?"

WARREN "We can't deny them from discussing them, but that is my motion for the C.U.P."

GAROFALO "This says here 'conceptual site plan'. It doesn't necessarily mean it is set. How can we pin down these openings exactly?"

KROUT "Because you are identifying where the parcel lines are going to be as you are amending this C.U.P., and these access points are going to be at the edges of those parcel lines. I think that that is pretty clear. I think it would be helpful to clarify where the 8-foot wall is though. Commissioner McKay suggested that, and I agree."

GOLTRY "I wanted to clarify that I think that the location of the access openings on the conceptual site plan correspond with the two openings on the proposed C.U.P. plan as well. They are in the same location."

WARREN "Marvin, what did you say about the wall?"

KROUT "When you say adjacent to the Dillons building, does that mean that no further north or south than the north wall or the south wall of the Dillons building?"

HARTMAN (From the audience) "Right."

KROUT "Parallel to the north and south faces of the building would be 8 feet, and then it would go down beyond that?"

HARTMAN "Right."

KROUT "I just want to make sure that there is no misunderstanding."

BARFIELD "I thought I heard him say adamantly that Dillons was not going to accept the removal of that access in front of their store, and that was in your motion."

WARREN "I think that is a decision they will have to make now."

GAROFALO "One other thing I want to mention is, I don't think we asked the applicant, unless I missed it, about the lining up of the entryway on Woodlawn with the existing street as Jamsheed had suggested. Will you accept that?"

HARTMAN (From the audience) "That would work."

GAROFALO "On 37th Street. Isn't that what you were suggesting, Jamsheed?"

MEHTA "To line it up with the existing street or have an offset of about 100 feet. The existing offset might be in the 50 to 60 foot range. What I am also hearing from Commissioner McKay is that it not being a significant existing street on the north side, that that kind of an offset would be acceptable."

We have toyed with that idea as well. We aren't so insistent on adding that additional offset to make it 100 feet. It would be good if they could. Our initial thought was look at Parcel 2. The longer side is along 37th Street and if, in fact, you were to switch it around 90° so the longer side would have been on Woodlawn, then you would have met everything we are talking about in terms of location. If that is not possible, giving the way the motion is right now, it is pretty acceptable considering where it is coming from."

CARRAHER "Is there any further commentary with regards to the motion?"

GOLTRY "We would like one more clarification. We talked about the metal on the kiosk building, but otherwise the exclusion of the metal materials. Was that included in the motion?"

WARREN "I agreed to accept their site plan with what they are providing. I said that as explained how they were going to build that fuel facility using the decorative metal, and that I had included that as a part of the site plan."

HENTZEN "Donna, you didn't make any restrictions on the metal building, did you? Did you make that in your recommendations?"

GOLTRY "Yes. Because the original C.U.P. restricted metal buildings. Metal could not be a predominant material in the original C.U.P. That was dropped when the amendment was brought in. When we discussed it they said, 'well, that's fine, this wasn't really an issue because we planned to use all block-type construction anyway'. So, we added back no metal as a predominant building material. Now, today, he has raised the issue about the little kiosk building, which is a small issue."

KROUT "Our recommendation is that you stay with the predominant buildings. I think that the shopping centers that look better in town are the ones where they are tying the materials together, and it looks like it is intentional. It seems to me that it is not so hard for Dillons to put a little block on the base of a little fuel outlet. They have done that in other cases like Maize and 21st Street. At least there is a little relationship between buildings. But that is up to you."

WARREN "I have reason to believe that with the amount of money they are going to have in these facilities, and the pride that Dillons take, they are not going build something that we are going to be ashamed of. So I am going to accept what they have said. If it is something they can live with, I believe we can, too."

VOTE ON THE MOTION: The motion carried with 9 votes in favor (Marnell, Johnson, Warren, Warner, Carraher, Garofalo, Michaelis, Hentzen and McKay), and 4 in opposition (Platt, Lopez, Barfield and Osborne-Howes).

PLATT "I would like to explain my vote for the record. I think we have accomplished a great deal in terms of give and take back and forth. I was strongly thinking about supporting the request, but I backed off because it seems to me that one of the things we need to pay attention to is design detail. It seems to me that the predominant item that will be noticed from the street will be this kiosk for the Fuel Outlet.

One of the things that disturbed the neighbors was that gas outlet, and it seems to me that the least we could do would be to attempt to tie it in with the development of the center and not try to make it something that sticks out like a sore thumb. That's why I voted no."

CARRAHER "Your explanation is noted."

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10. **Case No. ZON2000-00040** - Gerard Deree (Owner/Applicant); PEC, P.A. c/o Gary Wiley (Agent) request zone change from "MF-18" Multi-Family to "LC" Limited Commercial on property described as:

The North 127.64 feet of the East 200 feet of Lot 1, Block 1, Seneca Hills 2nd Addition to Wichita, Sedgwick County, Kansas. Generally located north of 50th Street South and west of Seneca.

SCOTT KNEBEL, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "MF-18" Multi-Family to "LC" Limited Commercial on a 0.6 acre platted tract located north of 50th Street South and west of Seneca. The subject property is currently undeveloped but adjoins the applicant's business (Dutch's Greenhouse) along the south property line. The applicant proposes to construct a greenhouse on the subject property for the indoor storage of materials used for operations and sales. The "LC" Limited Commercial zoning district permits a greenhouse for wholesale and/or retail purposes by right. Greenhouses are included in the Unified Zoning Code definition of Agricultural Sales and Service.

The surrounding area is characterized by both commercial and residential uses with significant amounts of undeveloped property remaining. The property immediately south of the site is developed with Dutch's Greenhouse on property zoned "GO" General Office and "LC" Limited Commercial. The property immediately north of the site is developed with a beauty shop on property zoned "NR" Neighborhood Retail. The remaining properties north and south of the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences on unpaved streets. Several residential lots north and south of the subject property remain undeveloped. The property west of the site is undeveloped and is zoned "MF-18" Multi-Family. The property immediately east of the site across Seneca is zoned "MH" Manufactured Housing and is developed with a manufactured home park. The remaining properties east of the site are zoned "SF-6" Single Family Residential and are undeveloped.

CASE HISTORY: The site is platted as part of the Seneca Hills 2nd Addition, which was recorded May 1, 1985. The applicant's property south of the subject property has been approved for two zoning changes in the past for the establishment and expansion of the applicant's business (Dutch's Greenhouse). The southern-most portion of the applicant's property was changed (Z-0787) from "AA" One-Family to "LC" Limited Commercial on September 2, 1966 to establish the applicant's business at the site. The portion of the applicant's property immediately south of the subject property was changed (Z-3015) from "R-5" General Residence to "LC" Limited Commercial and "BB" Office on January 18, 1991 to expand the applicant's business.

ADJACENT ZONING AND LAND USE:

NORTH: "NR"	Personal Care Service
SOUTH: "GO & LC"	Agricultural Sales and Service
EAST: "MH"	Manufactured Home Park
WEST: "MF-18"	Undeveloped

PUBLIC SERVICES: The site has access to Seneca, a four-lane arterial street with 1997 traffic volumes of approximately 6,300 vehicles per day. The 2030 Transportation Plan estimates that traffic volume on Seneca will increase to approximately 9,000 vehicles per day. The proposed greenhouse would generate approximately 120 additional vehicles per day. Public water and sewer currently serve the site.

CONFORMANCE TO PLANS/POLICIES: Despite the site's zoning for multi-family residential development, the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity

from adversely impacting surrounding residential areas. The proposed use of the subject property meets these locational guidelines for commercial development. Additionally, expansions of businesses at existing sites are generally encouraged over constructing completely new sites for business expansions.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by both commercial and residential uses with significant amounts of undeveloped property remaining. The property immediately south of the site is developed with Dutch's Greenhouse on property zoned "GO" General Office and "LC" Limited Commercial. The property immediately north of the site is developed with a beauty shop on property zoned "NR" Neighborhood Retail. The remaining properties north and south of the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences on unplatted lots served by unpaved streets. Numerous residential lots north and south of the subject property remain undeveloped. The property west of the site is undeveloped and is zoned "MF-18" Multi-Family. The property east of the site across Seneca is zoned "MH" Manufactured Housing and is developed with a manufactured home park.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-18" Multi-Family, which accommodates moderate-density, multi-family residential development and complementary land uses. Given the limited size of the subject property and its location adjoining an existing greenhouse, it is unlikely that the subject property would develop with multi-family residential uses.
5. Extent to which removal of the restrictions will detrimentally affect nearby property: The applicant's existing business (Dutch's Greenhouse) has existed in the area for over 35 years and does not appear to have had any detrimental impacts on nearby properties. A small expansion of this business also should not have any detrimental impacts on nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Although the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development, the Comprehensive Plan indicates that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed use of the subject property meets these locational guidelines for commercial development. Additionally, expansions of businesses at existing sites are generally encouraged over constructing completely new sites for business expansions.
5. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted, especially since Seneca has relatively low traffic volumes for a four-lane arterial street.

KNEBEL "I suggested to Marvin that perhaps on this case we could just see if there were any interested parties in the audience to discuss this. The applicant is in agreement with the recommendations."

CARRAHER "Are there any questions of staff on this issue? Seeing none. Does the applicant wish to speak? No. Okay. Are there any questions of the applicant? Seeing none. Is there anybody in the gallery who wishes to speak for or against the issue. Seeing none, we will bring it back to the Commission. Is there any commentary by the Commission? Any questions?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is characterized by both commercial and residential uses with significant amounts of undeveloped property remaining. The property immediately south of the site is developed with Dutch's Greenhouse on property zoned "GO" General Office and "LC" Limited Commercial. The property immediately north of the site is developed with a beauty shop on property zoned "NR" Neighborhood Retail. The remaining properties north and south of the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences on unplatted lots served by unpaved streets. Numerous residential lots north and south of the subject property remain undeveloped. The property west of the site is undeveloped and is zoned "MF-18" Multi-Family. The property east of the site across Seneca is zoned "MH" Manufactured Housing and is developed with a manufactured home park. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-18" Multi-Family, which accommodates moderate-density, multi-family residential development and complementary land uses. Given the limited size of the subject property and its location adjoining an existing greenhouse, it is unlikely that the subject property would develop with multi-family residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: The applicant's existing business (Dutch's Greenhouse) has existed in the area for over 35 years and does not appear to

have had any detrimental impacts on nearby properties. A small expansion of this business also should not have any detrimental impacts on nearby properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Although the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development, the Comprehensive Plan indicates that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed use of the subject property meets these locational guidelines for commercial development. Additionally, expansions of businesses at existing sites are generally encouraged over constructing completely new sites for business expansions. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted, especially since Seneca has relatively low traffic volumes for a four-lane arterial street.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

MICHAELIS moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (12-0). Platt was not present.

11. **Case No. ZON2000-00039** - James W. and Mary E. Peters (Owners/Applicants); Baughman Company PA c/o Russ Ewy (Agent) request zone change from "SF-20" Single-Family Residential to "GC" General Commercial on property described as:

Beginning 208.71 ft E and 208.71 ft N of the SW corner of the SE1/4; thence W 78.71 ft to pt 130 ft E of W line; thence N 195.91 ft; thence E 348.98 ft; thence S 11.8 ft.; thence SWLY 322.88 ft to beginning -Sec 7-28S-R1W. Generally located on the north of K-42 Highway, east of Annie (Schulte, KS).

DALE MILLER, Planning staff pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicants are requesting a zone change from "SF-20" Single-Family Residential to "GC" General Commercial on a unplatted tract that is approximately one acre in size. The proposed zone change would permit self-service storage warehouse uses north of K-42 and east of Annie. The site is adjacent to an existing convenience store/gas station. The "GC" General Commercial district is the first district which permits self-service storage warehouse for sites such as the subject property that do not have direct access to an arterial street. The "GC" district does not require a resident manager. Access to the site will be from K-42, via an existing driveway located to the east of the convenience store/gas station.

The applicants, however, propose to construct two 30' x 100' buildings to the north and one 30' x 100' building along the west perimeter. The total warehouse area is estimated to be approximately 16,000 square feet. The applicants do not plan to construct an office/residence building since their current business (Phillips 66) is adjacent to the south. There will be no outdoor storage of vehicles or equipment, according to the applicants. The applicants intend to coordinate the color scheme of the proposed warehouses with the same colors (earth tones) of the existing convenience store/gas station building.

The surrounding area is developed with residential, church, school and commercial uses. The most directly impacted properties by the proposed development are residences, zoned "SF-20" Single-Family Residential, located to the west, the Clearwater Training Center (alternative school) to the west that is zoned "LC" Limited Commercial, a Catholic Church to the north zoned "SF-20," the Phillip 66 business directly to the south which is zoned "LC" and a single-family residence to the east, across a vacant lot, approximately 1,000 feet, that is zoned "SF-20." The site will have to be developed in conformance with zoning screening requirements; compatibility setback, height and noise standards and zoning lighting limitations.

The applicants are proposing a voluntary Protective Overlay #78 which "shall limit all uses in the "LC" Limited Commercial district and self-storage warehouse. The self-storage warehouse use shall be subject to the Unified Zoning Code's Supplementary Use Regulations, Section III-D.6.y, with the exception of the following conditions: 1, 2, 5, 8, and 17" (see attachment).

To limit the impact of the proposal on surrounding properties, planning staff recommends that the site be developed in accordance with the development standards in the Unified Zoning Code for self-service storage warehouses in the "LC" districts.

Planning staff also recommends that approval be subject to review and approval of a site plan and building elevations. To preserve options for review of future development at this site, planning staff recommends that the zone change to "GC" General Commercial be limited to the site of the proposed self-service storage warehouse.

CASE HISTORY: The subject property is platted as Schulte Country Store Addition, which was recorded on August 13, 1990. Improvements to the K-42 highway, approximately seven years ago, required the applicants to dedicate some of their property for right-of-way acquisition.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20"	Catholic Church
SOUTH:	"LC"	Phillips 66 Business
EAST:	"SF-20"	Residential
WEST:	"LC" & "SF-20"	Alternative School & Residential

PUBLIC SERVICES: This site has access, via a driveway east of the Phillips 66 building, to K-42, an extra-wide two-lane highway. Traffic volumes, rated in 1999, for K-42 at MacArthur were 7,170 average daily trips (ADTs). The projected ADTs for 2030 is 11,247. Municipal sewer services are not available to this site. The applicant is currently circulating a petition with the County to extend sewer services, west along K-42 from the Mid-Continent Industrial Park, in the next 1-2 years. Currently, there is rural water (Rural Water District #4) on site in addition to a private water well. There will be no water or sewer services provided to the proposed warehouses.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zone Code contains development standards for self-service storage warehouses located in the "LC" districts to which the subject property is currently held. Furthermore, the property is classified as a "convenience center" which typically range from 2-4 acres in size, typically anchored by a mini-market with several other small-scale tenants. Convenience centers would typically be expected to develop at one or more corners of arterial intersections (K-42 & MacArthur).

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to platting within one-year and a voluntary Protective Overlay #78 with the following conditions:

1. The Protective Overlay #78 shall limit all uses in the "LC" Limited Commercial district (with additional limitations for liquor stores, adult bookstores, drive-in restaurants and only for a self-storage warehouse). The self-storage warehouse use shall be subject to the Unified Zoning Code's Supplementary Use Regulations, Section III-D.6.y, with the exception of the following conditions: 1, 2, 5, 8 & 17.
2. The hours of operation for the self-storage warehouse will be same as the adjacent Phillips 66 business.
3. Screening, constructed of standard building materials, or an approved landscape buffer, shall be provided along the west, east, and north perimeter of the self-service storage warehouse facility.
4. Outdoor lighting sources shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lots.
5. Signage shall include a monument sign, not to exceed 12 feet in height nor exceed 32 square feet in gross surface area.
6. Portable signs, off-site signs, banners, string pennants and the like shall not be permitted, except for a banner sign permitted for 30 days from the opening of business.
7. Building heights shall be limited to 20 feet in height
8. Access to the site will be from K-42, via an existing driveway located to the east of the convenience store/gas station.
9. Prior to issuance of a building permit, a site plan shall be submitted for review and approval by the Director of Planning. The site plan shall indicate type and location of perimeter enclosure materials, which shall entirely enclose the self-service storage warehouse facility. The site plan also shall indicate the size and location of the landscape buffer areas.
10. The self service warehouses will be in compliance with the Unified Zoning Code (UZO) requirements, ensuring that due consideration is given to Section III-D.6.y (5) on architectural design that is compatible with the surrounding residential and commercial development and that adequate screening is provided. The colors of the exterior doors of the self-service warehouse shall be of earth tones (and not bright colors) in an effort mitigate the impact to the neighborhood. The building exterior plan shall be reviewed and approved by the Director of Planning.
11. Prior to issuance of a building permit, the Director of Planning shall submit building elevations for review and approval. The building elevations shall indicate the type of wall, roofing materials, colors, and the building and wall heights. Additionally, the exterior walls of the storage buildings, used to enclose the perimeter of the facility, shall be of a similar architectural treatment and shall be of the same texture, color, and appearance as the

masonry wall that encloses the gaps between the storage buildings.

12. Outdoor speakers and sound amplification systems shall not be permitted.
13. The Director of Planning will provide a courtesy notification to the MAPC and property owners in the notification regarding the approved site plan.
14. Any major changes in this site plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
15. Prior to publishing the resolution or ordinance establishing the zone change, the applicants shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.
16. The applicants shall submit 4 copies of the site plan to the Metropolitan Area Planning Department within 30 days after approval by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is developed with single-family residential, church, school and commercial uses. The most directly impacted properties by the proposed development are residences zoned "SF-20" Single-Family Residential and located to the west, the Clearwater Training Center (alternative school) to the west is zoned "LC" Limited Commercial, a Catholic Church to the north is zoned "SF-20," the Phillips 66 business directly to the south which is zoned "LC" and a single-family residence to the east, across a vacant lot, is zoned "SF-20."
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and could be developed for commercial uses; however, the site has remained undeveloped for over 10 years since it was zoned "LC." Currently, there is a lagoon on the property that will be abandoned once municipal sewer service is provided and prior to the actual construction of self-service storage warehouses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requirements of the Unified Zoning Code and the recommended conditions of approval should help mitigate most of the detrimental impacts on properties from lighting, noise, and other factors.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zone Code contains development standards for self-service storage warehouses located in the "LC" districts to which the subject property is currently held. Furthermore, the property is classified as a "convenience center" which typically range from 2-4 acres in size, typically anchored by a mini-market with several other small-scale tenants. Convenience centers would typically be expected to develop at one or more corners of arterial intersections (K-42 & MacArthur). They could also be appropriate located at the intersection of an arterial and collector street, where proper turn lanes are in place or planned, in order to be more accessible to the residents of the immediate neighborhood served by the collector street.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

MILLER "We will try to do this the same way as we did the previous one. We want to find out if there is anybody here that wants to speak on this. The agent is here."

CARRAHER "Are there any questions of staff? Seeing none, does the applicant wish to speak?"

RUSS EWY "I am with the Baughman Company, agent for the applicant. The only reason I am up here is that I think there are people in the audience that would like to speak against this item. Barry and I went over the staff report prior to the start of the meeting. We are in agreement with staff comments. On our voluntary Protective Overlay, we wish to exempt the standards of this self-storage warehouse development. We wish to exempt the following conditions: Items 1,2,5 and 17 of the Zoning Code. Item 17 was left off of the recommendation of the first condition of the Protective Overlay. So we would seek to include, as we did on our Protective Overlay, Item 17, which deals with the onsite manager of the facility, in case you were wondering what it was.

Other than that, we are in agreement with the staff comments. Jim Peters, the owner of the property and the owner of the convenience store The Schulte Country Store is here, and perhaps he can speak during the rebuttal if necessary. I would be more than happy to answer any questions."

CARRAHER "Are there any questions of the applicant."

LOPEZ "Would you restate your concerns with recommendation Nos. 1 and 2? Did you want them withdrawn?"

EWY "Condition No. 1 of the Protective Overlay, I believe Barry will tell you, omitted....you can see there at the last line, it says 'with the exception of the following conditions'. Condition No. 17 of that section of the Zoning Code was omitted from that Condition of Approval. We are seeking to stick that back in."

LOPEZ "Oh, okay."

EWY "So it should read 'Items 1,2,5, 8 and 17. And I believe, also, that this is unplatted property, so regardless of making it a condition of approval, we will have to plat this property before we are able to obtain a building permit. I think the recommendations should probably also read 'approve subject to the Protective Overlay, as well as platting'."

CARRAHER "Are there any further questions of the applicant? Thank you. Is there anyone in the gallery who wishes to speak in favor of this item? Is there anyone in the gallery who wishes to speak in opposition to this item?"

LAVERNE SAUER "I live at 101 Susie. I live about a block and a half west of the place where you want to re-zone. I am strictly against rezoning that and letting some more buildings go in on that general location, because we are already looking at an accident there ready to happen. He has limited space for parking. He has the land there that he wants to put some buildings on, but he doesn't have enough parking. He needs more room for parking. There are trucks parked out next to K-42, which makes it very difficult when you come down there. Two or three times now I started home and people come out of there and don't realize that that is four lane and pull out. You get almost a head-on collision coming your way. If he is going to use that area, he should be using it as a parking area for trucks. They park out along K-42 and it is very, very dangerous. That is all I have to say, but I am strictly opposed to it. I hope you don't approve anything for it."

CARRAHER "Are there any questions for the applicant?"

HENTZEN "Is that where that filling station is on the corner there?"

SAUER "Yes, it is. A Phillips 66 right there."

HENTZEN "And he is asking for the property behind him?"

SAUER "Yes. K-42 comes right along here (indicating). The station is right here and he wants to go right into here, but he doesn't have any room here to park in the beginning. If he uses that area for parking, it would be a lot more safer than trying to fill it full of buildings."

GAROFALO "Does the applicant do mechanical work there, where there are a lot of cars?"

SAUER "No. It is like a Quik-Trip."

GAROFALO "Oh, okay. It's just a convenience store."

SAUER "Yes, and you have on this paper here like 7,170 people average daily go by there."

GAROFALO "So where do all of these people park if there is no parking? People who pull in there?"

SAUER "A lot of them park along the road, some of them park in front of the store, some under the canopy to fill gas. But he needs more area to park in for the people that stop there. A lot of those big semis park right along the front of the store by the roadside. It makes a hazard for anybody coming by there. So if you have 7,000 some people coming by there a day, it is just an accident ready to happen. And if he fills the rest of it up with buildings, he will have less room to park."

GAROFALO "Thank you."

CARRAHER "Any other questions for the speaker? Thank you sir. Next person wishing to speak in opposition."

DEAN EDWARDS "I live at 2542 Titan Circle. If I may ask, how come the applicant and the caseworker didn't go first this time?"

CARRAHER "Mr. Ewy spoke on behalf of the applicant."

EDWARDS "Okay. I must have missed that. Sorry, I was out. I am the Chairperson for the Parish Council at St. Peter the Apostle Catholic Church. I am speaking on behalf of the Council and Father Patrick G. York. The Parish Council I represent is responsible for developing long-term plans and seeing to the issues of concern to the parish. Our parish property is located at 11000 Southwest Boulevard (indicating) right here, directly north of the Phillips 66. Currently, we have about 26 acres there. We are in negotiations to purchase another 44 acres, to make about a 70-acre complex. Right now, we are in the process of building a new rectory that will be right here. The foundation is in at this time. Just to let you know that it is within a couple hundred yards of the Phillips 66."

For those of you who are not familiar, let me take a minute, if I can, to give a few facts about our parish. St. Peter the Apostle just recently completed our third church in 1997. The growth in our parish has grown from approximately 200 families in 1992 to 700. We project to be a 1200 family parish within five years. Just as important, and in the same time frame, our school has gone from around 92 students, to currently 330 students, and we project 500 students within five years.

Our religious program for public school students is over 200 at this time. They visit our facility every Wednesday night. Most every other night in our facility is filled with functions that include seasonal sport practices in our gym and on our ball fields, some times as late as 10:00 p.m.

As we understand the reason for this re-zoning is to build storage units that we assume would give unrestricted access to the general public 24 hours a day, seven days a week. As you can probably tell by now, we are concerned for the safety of our students and our athletes, five days and nights per week and for our parishioners on Saturday and Sunday. As traffic has increased on K-42 since it has gone four lanes, we have experienced multiple events of vandalism, and break-ins, not known to our parish community before. We feel they are strongly correlated.

In addition to the safety issue, we are concerned about the aesthetics in the proposed changes, and the potential future uses of this property that would be granted by the re-zoning of this property. The specific examples we are talking about would be a liquor store, an adult bookstore, and things that we may find offensive.

With that said, our position on this re-zoning issue is simply this: we believe that more retail traffic, motor and/or pedestrian, will result in a less safe environment for our kids and our families. If you would happen to approve this re-zoning, we are requesting this Commission and the applicant strongly consider a concrete-type fence as the only option that will separate our two properties to keep inadvertent foot traffic to an absolute minimum and safety to a maximum. Something similar to the recently constructed public storage units north of Maple and Maize would be an acceptable example of adequate separation.

As I told you earlier, our Parish Council and community have been busy with long-term plans. Our parish complex that we propose will have a school expansion, a large gymnasium complex and a parish hall. This investment in our parish plan is expected to currently be in the \$8 million to \$10 million range. If I may take a moment to show you. (Indicating) Currently, the Phillips 66 would be up here, this is our current church, the rectory I was referring to is back here. Right now, the current school is this structure right here. We are going to propose to build a gym with a large commons area, then the school. This would be the old church and the parish hall and then the bell tower. Because of this, we strongly encourage them, again, to construct a concrete fence that would be equal to a height that would be required to hide these storage units, and a proper landscaping barrier that would consist mainly of pine trees that would blend in with the existing landscaping and that it be maintained.

Lastly, we would ask that this Protective Overlay that further defines the potential use of this property in the future specifically exclude that of the things I mentioned before--a liquor store, an adult book store and such. We believe this request to be reasonable and ask the Commission please accept it."

CARRAHER "Are there any questions for the speaker? Okay. Next speaker."

DALENE BLASI-BELT "I reside at 922 Jewel. Is this the time to turn in the Protest Petitions?"

KROUT "You can."

BLASI-BELT "There are several others that are going to be mailed. I do not live in the area, but I used to. I currently run the day care that is the other commercial venture in the area. The neighbors asked me if I would come and speak to you about their concerns about putting more commercial in. We have seen an unprecedented rise in things like vandalism and crime in the neighborhood in the last three years. We have recently gotten a second chance school in a building that was in Schulte.

Several of the neighbors have been bothered by people who have either been brought in by the existing convenience store. I know Mr. Peters is a good businessman and I know he would do everything he could to make this as secure as possible. However, being in the community and being concerned with children, and there are a lot of children in the community, no matter how hard you try, when you have a venture of this type, you are going to increase the number of people who enter a community. I think that is the neighborhood concern, that adding another venture that would bring outside people in would increase the incidents of crime and problems that would be in the neighborhood."

CARRAHER "Are there any questions of the speaker? Thank you. Okay, the applicant has two minutes for rebuttal."

EWY "To answer a few of the opponents concerns, one thing to keep in mind is the scale of this proposed development. The site itself is right at 1 acre. We are looking at approximately 10,000 or so square feet of storage space. We are talking a very limited development here. As you know, these developments can gobble up approximately 40% of the area of the site. We know that they are very, very low traffic generators. As proposed, we are going to develop less than 30% of this site, so this isn't going to be a large-scale development by any stretch of the imagination.

If you have ever happened to be out there to visit this site, you will realize that the church is nice. It is a very nice addition to that area. Mr. Peters being a businessman in that area, as was mentioned before, wants to maintain that. I think that

one can understand that this relatively quiet type of development probably makes a pretty nice buffer between the rear of a convenience store on a busy highway into that residential transition back behind the church.

So we don't see traffic or parking as an issue for this development. It is very small. We feel that this development, especially with the site plan review by the Planning Department being added to this request, is going to be able to maintain probably a pretty nice buffer for people at the church looking south towards the highway.

I probably won't take a lot of time to address the safety issue. Obviously if you are in the storage business, safety is your main concern or you don't do too much business. We would be willing to include some of the more obnoxious uses mentioned by the church representative, such as liquor stores and adult uses to the Protective Overlay, prohibiting those uses. With that I would answer any questions you may have."

HENTZEN "Russ, does the owner of this piece of land own any more land to the north?"

EWY "No. That is the extent of his ownership in the immediate area."

HENTZEN "That is the extent of it, right there. Okay."

BARFIELD "What is the proposed screening material?"

EWY "Actually, as we have proposed, I believe we are all used to the standard individual buildings being interconnected with the masonry walls in between buildings and using the rears of those buildings as screening. Mr. Peters is proposing that we are going to develop one large 'L' shaped building, so we would have the rear of the building offset with whatever architectural detailing. He is currently working with consultants on that. We would provide the solid screening with landscape buffer, obviously 'L' shaped, around the setback area, and a fence.

So we would be looking at a fence on the property line, landscaping and then the backs of the building."

BARFIELD "What type of fence?"

JAMES PETERS (From the audience) "We are open. We were thinking about a cedar fence though."

OSBORNE-HOWES "I didn't go by the site, but if it is a Phillips 66 station, you have said that you will create it similar to the Phillips 66. Is that the dark brick?"

EWY "I didn't know. That's what the convenience store is?"

OSBORNE-HOWES "It says you will coordinate the color scheme of the proposed warehouses with the same colors, earth tones, as the existing convenience store/gas station."

PETERS (From the audience) "Yes. Do you want me to come comment on that?"

EWY "Yeah."

OSBORNE-HOWES "And while you are coming up here, staff, in their recommendation has said to build it similar to the neighborhood. So there is a difference of opinion here, maybe."

JAMES PETERS "I live at 12700 West MacArthur. The Phillips 66 is, and I think a lot of you have probably seen, maybe, the new one that is at Tyler and Kellogg, which is the Phillips 66 motif, which I have also done to my store last year. We put \$150,000 into my store and it looks just like that. It has the three toned brick, with the darker gray, the black tile and the lighter gray on the top and we want to build the buildings in that same color scheme. We have even talked about putting that brick on the corner of the building to bring them together so that they look right.

Phillips is very, very particular about what you do, and if your sites don't look up to spec, they will scream and holler at you, big time. So we want it to look nice and those are very neutral colors, so I don't think they would be offensive. The only thing we might consider, because Phillips is famous for their red stripe on their canopy, I don't want to put the red doors in, but maybe the guttering or something like that. But that isn't necessarily a must."

OSBORNE-HOWES "Because you talked about earth tones and that is what staff is talking about, too, I would assume that it would muted as opposed to bright."

PETERS "Yeah, the grays are fairly muted. The red is an option, as I said."

OSBORNE-HOWES "So you are willing to make that a part of it, so that the neighborhood and the church knows what color you are talking about?"

PETERS "That's right. The trees that are along the back of the property between my property and the church are already taller than what the buildings are going to be."

OSBORNE-HOWES "And what about limiting this to self-storage?"

PETERS "That is it. Inside self-storage. That is it."

OSBORNE-HOWES "Well, I am just going to follow up on what Russ said you were willing to eliminate."

PETERS "The liquor stores and adult movies aren't me. That's not my bag."

OSBORNE-HOWES "I understand, but could you just say that this will be only for self-storage?"

PETERS "I thought that is the way we had it written. And that is it. Self-storage and nothing else."

KROUT "Or other 'LC' uses."

OSBORNE-HOWES "Yes, or other 'LC' uses."

EWY "The way I had set up the voluntary Protective Overlay would be that it would be all 'LC' uses, for example an ancillary car wash."

PETERS "Well, I will take that back because we do have plans for a car wash in the future, which we would be building, but that is not on that property in the back. On this site, it is just self-storage."

OSBORNE-HOWES "You are willing to limit this to self-storage?"

PETERS "It is behind my business, it isn't out on the street."

OSBORNE-HOWES "Well, that would eliminate their concern of other types of uses that you could put in there."

PETERS "Yes, yes."

OSBORNE-HOWES "Thank you."

MARNELL "What is the scope of this? How many units is it going to be?"

PETERS "I think we propose around 15,000 or 16,000 square feet total, and I think we were going to go with one building across the back and one across this end here (indicating) and then maybe one more in the front. We don't know yet because I've got the people that are going to building the buildings for me, and I haven't gotten the contract yet, so I can't say for sure, but they are trying to figure out how we can get the best use out of that irregular piece of property."

MARNELL "Thank you."

KROUT "Could you respond to the comment that was made by the first speaker in opposition? He was concerned that there was inadequate parking and drives and access and that there were trucks parked on the right-of-way as a result, and things are too congested now, and we should use this land to spread things around."

PETERS "That is not true. Like I said, I just spent \$150,000 on that property and I paved my building all the way around and there is room for trucks to drive in. In fact, I even leased property from the business to the east of me, put a fence up there so that if trucks want to enter my property and buy fuel or to buy groceries or whatever they want to buy, they can come in the west drive, they can go around the front and they can come back out the east and go right on out onto K-42 Highway. There are 8 parking stalls for gas, there is parking for 10 or 12 across the front, and there is parking for approximately 30 cars around the outside. We never have that much traffic. The only time we have a problem is if a truck parks on K-42--that is his decision. Maybe he feels that he is just stopping for 2 minutes and come in and grab a pop and candy bar and he is going to be down the road and he doesn't want to drive in and turn around. It is easier for him to stop there and then just come in and right back out. But it has never caused a traffic problem."

GAROFALO "In line with Mr. Krout's question, could you go up to the map and show us what kind of traffic circulation you would have back there to the storage units?"

PETERS "Right now, the station is on this edge right here (indicating), and this part over here is like open field. The traffic pattern is here and comes around here like this. But when I designed this back in 1990, when we got platting and were putting in a new station and new pumps in here, I put the driveway on the east side on the very east edge of this canopy out here in this wide driveway. It's the access to this other half of this property. That is because eventually, if we ever get sewer out there, which we are working on, we would like to put a car wash in there. I am already stubbed out for that. That access would also go straight back into that piece of property there (indicating).

I also might mention that this property is not going to be open 24 hours a day. It is only going to be open during the hours that we are open, which is 5:30 a.m. to 10:00 p.m. It will be closed then and there won't be any access."

GAROFALO "So how would the traffic go? Show me exactly. Kind of use your finger or something. Show me what would the traffic flow be. How would they get back there?"

PETERS (Indicating) "They would come straight through here. My business is right over on this side and they would access here and then they could come the trail here and come right out this side and they could get right back out here. There will be plenty of room for them to get around. We are talking 30 to 40 foot drops."

CARRAHER "Are there any further questions of the applicant? Thank you. I will bring it back to the Commission. Is there any commentary on the issue by the Commission?"

PLATT "I have a question of staff. What is in those lots directly west of the application area?"

BARRY CARROLL, Planning staff "Those are residential houses."

PLATT "How many are there?"

CARROLL "All up and down Annie Street."

HENTZEN "Barry, how do you get to the church? Where is the entrance to the church property? Is it east of this property or up Annie Street?"

CARROLL "The church is directly north. I am assuming that they come up her, but let me ask."

HENTZEN "Yeah, since he is here, we don't have to assume."

EDWARDS "That was the old way. Once the new church is built, there is a diagonal here (indicating) off of K-42."

HENTZEN "On property you own?"

EDWARDS "Yes. This is our property all the way back through here (indicating), and the property we were talking about is back here."

GAROFALO "I think somewhere in here it says no outside storage?"

CARROLL "That's right. I spoke with the applicant and he agreed that there would be no outside storage."

GAROFALO "Is that in the conditions? I thought I saw it somewhere."

CARROLL "It is in the Background Section."

GAROFALO "Shouldn't it be in the Condition Section, listed as one of the conditions, 'no outside storage'?"

CARROLL "I think it should be. By limiting it to the 'LC' district, that precludes any outside storage. Part of that Protective Overlay."

CARRAHER "Okay. Any further commentary by the Commission?"

OSBORNE-HOWES "Is there buffering on the west where it abuts single-family? Is there buffering or landscaping?"

CARROLL "Currently?"

OSBORNE-HOWES "Will there be?"

CARROLL "There will be. Where there is commercial that abuts residential there has to be screening by Code. There are some existing trees currently."

CARRAHER "Any further commentary? Seeing none, what is the pleasure of the Commission?"

MOTION: I move that we recommend to the governing body that the request be approved, based on the staff comments and the conditions that the applicant offered.

MICHAELIS moved, **WARREN** seconded the motion.

OSBORNE-HOWES "I just want to clarify that the applicant also talked about the colors and talked about earth tones. He specifically talked about grays and not the red. He talked about some type of a fence."

PLATT "Item No. 12 says 'the development of this property shall proceed in accordance with the site plan as recommended for approval by the Planning Commission'. Where is the site plan?"

CARROLL "There is not a site plan as yet. We are requiring that a site plan be submitted."

KROUT "What Item was that?"

PLATT "Item No.12."

KROUT "There is a conflict there because we are saying 'site plan submitted to Planning Director' in No. 8 and then 'site plan for approval by the Planning Commission and approved by the governing body' in No. 12. I don't think that you really need to have Item No. 12 in there."

CARRAHER "Mr. Michaelis, would you like to amend your motion?"

MICHAELIS "Yes. I will amend the motion to take out item No. 12."

AMENDED MOTION: I move that we recommend to the governing body that the request be approved, based on the staff comments and the conditions that the applicant offered; removing Item No. 12.

CARRAHER "Does the second concur?"

WARREN "Yes."

MICHAELIS moved, **WARREN** seconded the motion.

MCKAY "I think one of the major things is the fence. I don't know if the applicant is aware that the people behind are requesting a concrete fence and he said cedar. There is a considerable cost difference. Considerable. He said whatever it takes. That is why I am asking the question. Since he made that comment, I would like to call him back up and see if he understands what the cost difference might be. It is going to be great."

PETERS "I am kind of leaving this to this Commission. I do realize the difference in the cost. I am trying to get along with the community. That has been my plan from Day No. 1. That is what I have told everyone since I started this project that I want to do whatever is necessary because I am trying to make this enhance the community. I don't want it to be a deterrent from the community. I realize that there is a difference in cost, and I would rather put up a cedar fence. That's expensive enough--that is \$15 a linear foot. But if that is what it is going to take, then we are willing to look into it."

HENTZEN "I am going to vote against the motion, and I will tell you what my thoughts are. This particular area, Parish, church community has done a tremendous job down there and made it a really, really pleasant community. They sent their main man here to tell us that they would not like to see this happen. So I am going to listen to them and vote no on this."

MICHAELIS "I would like to add a couple of comments, I guess. As far as the fence, the way I am understanding this, this building is pretty well going to parallel the west property line as well as the north property line. The building is going to be out of materials that are compatible and suitable color-wise to the existing building, which I think, and here again it is kind of a trademark thing and I hate to try to restrict a company from being able to use the colors that are their company's as long as it is compatible in the surrounding area."

I think that I heard the gentleman from the church raise that they were not so much against the usage, as long as it was properly screened. Then I heard the comment that there were large trees along there. So, if there are large trees along there and those trees are actually buffering it, then a lot of these things we are talking about become kind of mute. I would like to have the gentleman from the church back up to clarify the screening issue."

EDWARDS "I did say that basically we believe that more retail traffic, motor and/or pedestrian will result in a less safe environment. So we are against this. I went on to say that if you did approve it, we were looking for the concrete wall, a nice masonry divide, high enough to hide the storage units. I guess I have to beg to differ with the applicant on the size of the trees, if we are thinking about the same trees. The ones that I am thinking about are about this high (indicating). Some of them are dead. That is why I made the comment about making sure it is maintained. I think it separates on the north side of that lagoon that separates our two properties. Does that help clarify it? We are against it, we believe more traffic would make it less safe for our kids and our families, but if you do vote for it, we were looking for those restrictions I mentioned."

GAROFALO "I would propose that the maker of the motion include in the conditions the hours of operation as related by the applicant. He says it is going to be open from whatever in the morning until 10:00 at night. Whenever the place is open."

MICHAELIS "I would do that."

CARRAHER "Does the second concur with that?"

WARREN "You are saying that you want those hours to correspond with the hours that the convenience store is open?"

MICHAELIS "Yes."

WARREN "Okay. I will concur."

KROUT "For clarification, does that mean that if in the future the hours of the store change and become 24 hours then this operation changes, too. If not, you need to limit it to the hours that were stated earlier."

WARREN "I think as long as there is somebody there to control this, I don't see a problem with people entering it."

BARFIELD "As far as the fencing goes, the applicant volunteered that there would be fencing along with the trees. Basically the only question here was the type of materials that the fence would be constructed of."

KROUT "I just want to express that I am a little nervous about you having all of the responsibility to the Planning Director to approve the site plan, the landscape plan, the building materials, and the colors. It is a little bit vague for me. I would suggest that one option would be that you would require the Planning Commission to review and approve the landscape plan, the site plan and the building plan. You should require that to come back to you. We have done that once in a while. It is just a little bit goosey for me. This would give the Catholic Church, or other people, an opportunity to take a better look at the plan as it is prepared and submitted. I would be more comfortable with that."

CARRAHER "Mr. Michaelis, are you agreeable to that?"

MICHAELIS "Oh, I don't know. I think on a project of this size, I think Marvin is probably qualified to do that."

(Laughter here)

KROUT "If you decide that you want to leave it that way, I do feel like we will owe a courtesy notification to the church so that we can all sit down together and see what the plan is and work it out."

BARFIELD "I just want to suggest that if we went along with what Marvin suggested, that we put No. 12 back in."

CARRAHER "Mr. Krout, would you like to comment on that?"

KROUT "I think we can handle a case of this size (more laughter), but I do think that a notification is needed in this case because there is some ambiguity about exactly what is going to be built out there, so we will provide notice. That means that it will be an administrative decision, and there is an appeal on any administrative decision. If the Catholic Church doesn't feel that we have properly interpreted the intent, they can go to the County Board of Zoning Appeals and ask that that be rescinded."

So I think that you can leave it administrative, but I just want to say that we will provide a notice so that we can all see what it looks like."

CARRAHER "Does anybody remember what the entirety of the motion was?"

MICHAELIS "It was per staff comments and conditions. We added Item No. 17 back in there and took out Item No. 12, and the hours of operation are to coincide with the hours of operation of the hours of operation of the business. Then the site plan and all of that stuff is going to be worked out by staff."

AMENDED MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is developed with single-family residential, church, school and commercial uses. The most directly impacted properties by the proposed development are residences zoned "SF-20" Single-Family Residential and located to the west, the Clearwater Training Center (alternative school) to the west is zoned "LC" Limited Commercial, a Catholic Church to the north is zoned "SF-20," the Phillips 66 business directly to the south which is zoned "LC" and a single-family residence to the east, across a vacant lot, is zoned "SF-20." The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and could be developed for commercial uses; however, the site has remained undeveloped for over 10 years since it was zoned "LC." Currently, there is a lagoon on the property that will be abandoned once municipal sewer service is provided and prior to the actual construction of self-service storage warehouses. Extent to which removal of the restrictions will detrimentally affect nearby property: The requirements of the Unified Zoning Code and the recommended conditions of approval should help mitigate most of the detrimental impacts on properties from lighting, noise, and other factors. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zone Code contains development standards for self-service

storage warehouses located in the "LC" districts to which the subject property is currently held. Furthermore, the property is classified as a "convenience center" which typically range from 2-4 acres in size, typically anchored by a mini-market with several other small-scale tenants. Convenience centers would typically be expected to develop at one or more corners of arterial intersections (K-42 & MacArthur). They could also be appropriate located at the intersection of an arterial and collector street, where proper turn lanes are in place or planned, in order to be more accessible to the residents of the immediate neighborhood served by the collector street. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to platting within one year and to a voluntary Protective Overlay #78 and the following conditions:

1. The use of the property is limited to self-service storage warehouse use, shall be subject to the Unified Zoning Code's Supplementary Use Regulations, Section III-D.6.y, with the exception of the following conditions: 1, 2, 5, 8 & 17.
2. The hours of operation for the self-storage warehouse will be same as the adjacent convenience store/service station.
3. Screening, constructed of standard building materials, or an approved landscape buffer, shall be provided along the west, east, and north perimeter of the self-service storage warehouse facility.
4. Outdoor lighting sources shall employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lots.
5. Signage shall be limited to a monument sign, not to exceed 12 feet in height nor exceed 32 square feet in gross surface area.
6. Portable signs, off-site signs, banners, string pennants and the like shall not be permitted, except for a banner sign permitted for 30 days from the opening of business.
7. Building heights shall be limited to 20 feet.
8. Access to the site will be from K-42, via an existing driveway located to the east of the convenience store/service station.
9. Prior to issuance of a building permit, a site plan shall be submitted for review and approval by the Director of Planning. The site plan shall indicate type and location of perimeter enclosure materials, which shall entirely enclose the self-service storage warehouse facility. The site plan also shall indicate the size and location of the landscape buffer areas.
10. The architectural design shall be compatible with the surrounding residential and commercial development and that adequate screening is provided. The colors of the exterior walls and doors of the self-service warehouse shall be of earth tones (and not bright colors) to mitigate the impact to the neighborhood. The building exterior plan shall be reviewed and approved by the Director of Planning. Prior to issuance of a building permit, the Director of Planning shall submit building elevations for review and approval. The building elevations shall indicate the type of wall, roofing materials, colors, and the building and wall heights. Additionally, the exterior walls of the storage buildings, used to enclose the perimeter of the facility shall be of the same texture, color, and appearance as the adjacent convenience store/service station.
11. Outdoor speakers and sound amplification systems shall not be permitted.
12. Any major changes in this site plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
13. Prior to publishing the resolution or ordinance establishing the zone change, the applicants shall record a document with the Register of Deeds indicating that this tract includes special conditions for development on this property.
14. The applicants shall submit 4 copies of the site plan to the Metropolitan Area Planning Department within 30 days after approval by the Governing Body, or the request shall be considered denied and closed.

MICHAELIS moved, **WARREN** seconded the motion.

VOTE ON THE MOTION: The motion carried with 11 votes in favor (Osborne-Howes, Marnell, Johnson, Warren, Warner, Carraher, Lopez, Garofalo, Barfield, Michaelis and McKay) and 2 in opposition (Platt and Hentzen).

PLATT "I want to explain my vote. I am voting consistent with my votes in the past few weeks of opposing storage units that back up against residential property. I think this one falls into that category."

CARRAHER "Your commentary will be noted."

Osborne-Howes left the meeting at 5:45 p.m.

- 12. CUP2000-00031 - DP239 - The Gateway Center C.U.P. Amendment #1** - Kiser Gateway, LLC & Willard J. Kiser Properties, LLC, (owners); P.E.C. c/o Rob Hartman (agent) request an amendment to The Gateway Center C.U.P. to adjust uses, parcel sizes, and change signage restrictions on 59.5 acres of property zoned "LC" Limited Commercial, described as:

The Gateway Center Addition, Sedgwick County Kansas. Generally located on the southeast corner of 13th Street North and Greenwich Road.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting that DP-239 The Gateway Center C.U.P. be amended to allow changes in uses, as well as changes to signage, screening wall, and pedestrian provisions, in order to develop an entertainment district.

Currently, the C.U.P., which is 59.5 acres in size, has one large parcel, and 11 smaller parcels. The amendment seeks to divide Parcel 12, the 45-acre parcel, into two parcels of 20.65 acres and 24.48 acres. Each new parcel retains direct access onto 13th Street North. The maximum building coverage would remain at 30 %, and maximum gross floor area would remain at 35 %. Building height would remain at 35 feet for Parcels 1-10, and 80 feet for Parcels 11, 12, and 12A.

Use changes are the main focus of this amendment. It would allow taverns and drinking establishments and outdoor recreation and entertainment uses. These uses are not permitted by the current C.U.P. Taverns and drinking establishments are a "Conditional Use" when located within 200 feet of a church, a public park, a school, or a residential zoning district. This affects Parcels 1, 10, 11, 12 and 12-A. Taverns, which are defined in Title 4 of the City Code as places serving cereal malt beverages, are governed by more stringent provision in Title 4 than those of the Unified Zoning Code. These cereal malt beverage establishments are not allowed to be located within 150 feet from the exterior of the building to the property line of residential zoning districts, and within 300 feet to property line of churches, schools, and parks.

The original application also requested microbreweries be permitted and eliminated the prohibition on adult entertainment. It is our understanding that these requests have been withdrawn because microbreweries would have required rezoning to "GC" and because adult entertainment is a broader category that includes adult bookstore, adult motion picture theater, adult hotels, or adult motion picture arcade, and is not desired by the applicant.

Use changes affecting all parcels: Currently, uses that are excluded from all parcels are group homes, correctional placement residences, adult entertainment and private clubs, as defined by City Code; vehicle storage yards, storage of Class-C fireworks, poultry or rabbit dressing, tire retreading or recapping, grain storage and concrete or asphalt plants. Please note that several of these uses did not need to be included as exclusions because they are not permitted uses in the "LC" district. The only uses that should have been listed as excluded uses in the approved C.U.P. were group homes; correctional placement residences; and adult entertainment and private clubs, as defined by City Code. The remaining uses are not permitted in "LC" regardless of the C.U.P. language because a C.U.P. cannot add uses not permitted by a base-zoning district. The proposed amendment properly deletes the references to storage of Class-C fireworks, poultry or rabbit dressing, tire retreading or recapping; and grain storage. This cleans up a problem with the existing C.U.P.

The amendment would allow private clubs and drinking establishments on all parcels.

Parcel 1: This parcel adjoins the property zoned "SF-6" to the south. Currently it is restricted to "NR" uses so long as the property to the south is zoned or used for single-family or duplex use.

Proposed uses are all uses that are permitted in "LC" except: service stations, convenience stores with gas islands, vehicle service or repair with overhead doors facing residential districts, and uses excluded in all parcels.

Use changes affecting only portions of Parcels 1, 10, 11, 12 and 12-A: Currently service stations, convenience stores with gas islands, restaurants with drive-in or drive-through facilities, and vehicle service or repair uses that have overhead doors facing the residential districts are prohibited when located within 200 feet of residential zoning. This prohibition affects portions of Parcels 1, 10, 11, 12 and 12-A. However, the provision would be eliminated entirely by the proposed changes.

The amendment would allow outdoor recreation and entertainment uses on Parcels 12 and 12-A. Outdoor recreation and entertainment in "LC" is always a "Conditional Use" and would require site plan submittal for individual uses. However, no specific site plans were submitted. Also, the amendment would permit private clubs and drinking establishments on all

parcels, and specifically requests that they be allowed within 60 feet of the south property line (zoned "SF-6") when contained within a multi-screen theater complex. Approval of this request would effectively grant the "Conditional Use" for drinking establishments very near residential areas, without benefit of site plans to review for the appropriateness of the "blanket" request.

Regarding signage, the amendment would increase the maximum size of freestanding signs from 250 square feet to 300 square feet. It would also allow spires and ornamental towers connected to signs to exceed the 35 feet height limit.

The application area is vacant, with the east half in agricultural use. It is located next K-96. White Tail, a residential subdivision, and a small commercial site with a church under construction are located to the east of K-96. The adjacent tract on the south is vacant. Preston Trails Subdivision is located beyond the vacant tract. The property on the northeast corner of 13th and Greenwich is vacant, but was approved for DP-224 Dillons 13th and Greenwich C.U.P. Chapel Hill United Methodist Church plans to build upon the site that is located west of K-96 and directly north of the application area. The property west of Greenwich was submitted as DP-254 Kiser C.U.P for commercial and multi-family use. The case was deferred by MAPC on August 31, 2000. The land to the west of the proposed DP-254 is part of Raytheon, with the runway being nearby.

CASE HISTORY: DP-239 The Gateway Center C.U.P. was approved in March 17, 1999. The application area was platted as The Gateway Center Addition on March 6, 1999.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"; "SF-6"	Vacant (commercial and church site)
SOUTH: "SF-6"	Vacant
EAST: "LC"; "SF-6";	K-96, church under construction, single-family
WEST: "LC"; "SF-20"	Vacant

PUBLIC SERVICES:

The site has access to 13th Street North, a six-lane arterial, and Greenwich, a two-lane arterial. Traffic volumes on 13th Street north are approximately 5,700 vehicles per day and are projected to increase to approximately 17,500 ADTs in the 2030 Transportation Plan. Traffic volumes on Greenwich are approximately 3,500 vehicles per day and are project to increase to approximately 16,500 ADTs in 2030. These estimates do not include the projected increases due to development of The Gateway Center, which could generate up to 23,600 vehicles per day. Transportation improvements were included in the C.U.P to handle the projected traffic increases based on the projected uses in a traffic study prepared for the original application.

Water and sewer services are not currently available but could be extended to serve the property.

CONFORMANCE TO PLANS/POLICIES:

The Wichita Land Use Guide of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area for "commercial" use. Although it is located at a key interchange with K-96, it was not identified among the most appropriate sites for a large commercial activity node on the east side of Wichita by the *Comprehensive Plan*. However, much of the development potential near the interchange of 21st and K-96 has been "preempted" by church, school and cemetery uses.

RECOMMENDATION:

The proposed changes are designed to allow development of an entertainment district with a multi-screen theater complex, other potential indoor and outdoor recreation uses, and a concentration of restaurants and drinking establishments on the site.

The property can already be developed with many of the proposed uses. The main issue raised by the application is whether it is appropriate to locate other uses as part of a theater complex in close proximity to churches and residential areas.

A second issue is whether it is appropriate to locate drinking establishments within a planned commercial district outside the core area. Almost all C.U.P.s eliminate adult entertainment and drinking establishments from permitted uses. Even Players on 21st Street North across from the Sedgwick County Zoo and Bennigans qualify as restaurants because more than 50 percent of their revenues derives from food and beverages (non-alcoholic).

The proposed amendment would allow indoor and outdoor recreation uses on property that abuts property zoned "SF-6" with no buffer zone, and it would allow drinking establishments within 60 feet of the property line if contained within the theater complex. A large amount of potential noise and activity would be anticipated late at night by these uses, which would be in conflict with residential use. The lack of specific site plan for a particular outdoor recreation or entertainment activity renders this approval premature unless it is accompanied by a "Conditional Use" type of site plan review prior to development.

The height exemption on spires and ornamental towers attached to signs could potentially allow very tall signs unless limits are placed on this request. It should be noted that the sign cannot be illuminated between the hours of 11 p.m. and 7 a.m. per Sign Code regulations.

Finally, the development an "entertainment district" at this location could be viewed as at cross-purposes with the City's continuing investment in the Old Town entertainment district in the core area.

Based on these comments and the information available prior to the public hearing, Staff feels that while this is not the best location for an entertainment district due to the proximity to residential and church uses, the presence of K-96 and the large size (45 acres) of the site lend support to the proposed amendment. Based on these factors, Staff recommends the amendment be APPROVED subject to the following conditions:

1. Drinking establishments shall be prohibited on Parcels 10 and 11. No outdoor recreation or outdoor food and drink shall be allowed within 200 feet of the south property line.
2. General Provision #3 shall retain its exclusion of service stations, convenience stores with gas islands, restaurants with drive-in and drive-through facilities, and vehicle repair, limited, within 200 feet of residentially-zoned property.
3. A screening wall shall be provided in the 5-foot wall easement along the south property line.
4. Spires and ornamental towers may be attached to one sign, but shall not exceed 45 feet in height.
5. Signs shall not exceed 250 square feet in size.
6. General Provision #17 regarding pedestrian walks shall be retained as approved in the original C.U.P. (General Provision # 18).
7. No recreation and entertainment, outdoor, shall be permitted without submission and approval of a separate site plan in conformance with the requirements of Sec. V-D of the Unified Zoning Code as an amendment to the C.U.P.
8. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
9. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
10. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by MAPC, or the Governing Body, if required, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Most of the property surrounding DP-239 The Gateway Center is vacant. The area to the north is zoned for commercial uses near the intersection of 13th and Greenwich, and the property near K-96 is platted for a church. East of K-96 there is a church and residential development. The property to the south is vacant but zoned for residential use; the next tract to the south is being developed with residences, (Preston Trails). The property to the west is proposed for commercial and multi-family uses, but currently zoned "LC" and "SF-20." The rest of the property to the west is owned by Raytheon and is used as a test plane runway.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed in conformance to the existing C.U.P. plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Unless restrictions are incorporated to limit outdoor recreation, dining, and the more intense commercial uses such as service stations and drive-in restaurants near residential areas, the development would be anticipated to reduce the suitability of the adjacent areas for residential uses. The presence of a large concentration of drinking establishments seems incompatible with churches and places of worship.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed amendments are in conformance with the *Comprehensive Plan* in terms of its use as "commercial." The site is not one that was identified in the *Comprehensive Plan* for a large retail commercial development such as would result from establishment of a multi-screen theater complex and the concentration of restaurants and drinking establishments. However, it does have good access from an interchange on K-96. The proposed development could be viewed as contrary to the efforts to revitalize the City's core area.

5. Impact of the proposed development on community facilities: The proposed uses would be expected to generate a high volume of traffic. 13th Street North is improved to 5-lane standards. With the addition of transportation improvements required by the original C.U.P. on Greenwich and 13th, the arterial roads should be able to accommodate the traffic. The uses will require extension of water and sewer services.

GOLTRY "The primary emphasis in this requested amendment is to expand the permitted uses to include what we typically call in the Zoning Code 'tavern and drinking establishments', and also they have asked to be including 'outdoor recreation and entertainment'.

Because of the time, I will skip through the majority of the staff report, which you have had privy to. I don't know if there are people here who are here to speak on this case or not. I have received comments from a person over the phone and we also had a letter that was sent in today. I believe you have it at your desk. Since all of us have had privy to the information, I won't need to go over the whole staff report.

I do want to get down to our main recommendations. As you can see from the comments on Page 4 and 5, we did have reservations about the idea of expanding this 60 acre C.U.P. that is on the fringe at 13th and K-96 to an entertainment complex that would be centered on a theater complex, but also could have a variety of outdoor recreation uses, not unlike, maybe, the All-Star Sports-variety plus drinking establishments, particularly since they are in close proximity to churches that are planned and for development in residential areas to the south. You can see that in the recommendation section. As a result, the recommendations that are formulated on Pages 5 and 6 were to prohibit the drinking establishments on Parcels 10 and 11 and to prohibit outdoor recreation and outdoor food and drink within 200 feet of the south property line; and to continue to exclude service stations, convenience stores with gas islands, restaurants with drive-in and drive-through facilities and vehicle repair limited within 200 feet of residential property.

Item No. 3, 'a screening wall shall be provided and a 5-foot wall easement along the south property line' is more in the nature of a clean-up item. There was a wall easement shown on the original C.U.P., but for some reason, not a general provision regarding it, so that is clean up. But there is an issue that I do need to highlight and add to the recommendations regarding Item No. 3. If you notice from the handout you received at your desk, one of the items that the neighbors are concerned with, both the ones that called and the one who sent in the letter; they have actually asked for continuous screening along K-96.

What I would suggest is that the original C.U.P. specified that loading docks, outdoor work and storage areas, etc., (it was stipulated in the original C.U.P.), that those be screened along K-96 and 13th Street, and those requirements were specifically listed. They were not included in the amendment, so we would, at a minimum, include the language from the original C.U.P. to make it clear that we are screening outdoor work and storage areas of any kind along 13th Street and K-96.

Item No. 4 on spires and ornamental towers is probably an issue that we need to talk a little bit about, because I am not sure I still understand what they are asking for on this. From what the agent, Rob, has talked to me about, what we are looking at is trying to put a spire on top of a sign. Of course, we are concerned about that. We have been working to have a Uniform Sign Code to keep sign heights down and so if they are already achieving their sign heights, then we are talking about extending a spire on top of the sign. I am going to ask Rob to talk to you more about that. That is an issue I think we need to address.

On recommendation No. 7, I might point out what we are basically saying there is that they are really intending to do some sort of outdoor recreation entertainment like an All-Star sports-type use. That is a Conditional Use type of use and they ought to be coming back for a separate amendment with a separate site plan for the Planning Commission to look at the site plan and determine whether or not it is appropriately situated next to the residential area.

There was no D.A.B. meeting regarding this. We had a scheduling conflict; the Councilmember was not available at the time the D.A.B. was scheduled, so it has not been heard by the D.A.B. That has kind of made it difficult for us to not have had as much neighborhood input. I guess one other comment I should make, in passing, that would have been important had there been a lot of people here. Originally, the application asked for adult entertainment, but we find that adult entertainment is a lot more than just a tavern and drinking establishment. It is those adult videos and bookstores, etc., and they have withdrawn that application as well as the application for microbreweries. I will stand for questions."

CARRAHER "Are there any questions for staff?"

BARFIELD "That was going to be my question because the letter here does talk about their opposition to adult entertainment. So what you are saying is, and we can be assured that this applicant will not come back for adult entertainment purposes?"

GOLTRY "Well, we can be assured that when the revisions to the C.U.P. are finalized, that they have told us that they are not asking for adult entertainment as defined by the City of Wichita Code, which includes adult videos, bookstores, etc., so that won't be in the permitted use language. It will continue to say 'excluding adult entertainment'. But what they are asking for is to have the drinking establishments. For the entire C.U.P. We have limited it to certain parcels. I believe they are primarily in agreement with where we have placed the limitations. Rob will speak to that, but I believe that they are agreement with those recommendations.

The neighbors have had no way to know of the change, because it went out in the public announcement the way it came in for the application, and since we didn't have a D.A.B. meeting, there has been no way to disseminate that information to them."

BARFIELD "Okay. Also on one of the slides there was a church in close proximity. What is the distance between this proposal and the church?"

GOLTRY "It is across the street--across 13th. It is not built yet, it is proposed. They own the property and it has been platted already for them. (Referring to Chapel Hill United Methodist Church)."

BARFIELD "I would think that would present a problem."

GOLTRY "Chapel Hill? And there is a church under construction on the east side of K-96, but it is further away since it is past the highway. It is a Church of Christ, I believe."

GAROFALO "Donna, under this change, drinking establishments will be allowed?"

GOLTRY "Yes."

GAROFALO "And what are the rules on that, the distances from churches and what not?"

GOLTRY "It is a Conditional Use. If it is within 200 feet of churches, schools, parks or residential zoning."

KROUT "You have put in context--traditionally you have prohibited drinking establishments from C.U.P.'s, even though there may be places on the parcel that are more than 200 feet away. Meaning that they would have to come in and ask for a specific use in a specific location on the C.U.P. to look at doing that in the future."

In this case, it is a very large tract of land and given that, we thought that if we remove them from the areas that were within 200 of residential districts, that because of the large size of the tract that it was a use that might fit in with more regional retail activities."

WARREN "It looks to me like you have already restricted in this thing in 10 and 11, and then the south 200 feet of the whole site."

GOLTRY "Yes."

WARREN "Based on Item No. 1."

GOLTRY "Right."

WARREN "So they can't have those?"

KROUT "Not in those locations."

WARREN "Nos. 10 and 11 and the south 200 feet of the whole thing. You restricted quite a bit."

CARRAHER "Are there any questions of staff? Thank you. Would the applicant like to speak to the item?"

ROB HARTMAN "I am with P.E.C., on behalf of the applicant. We are in agreement with staff comments, and I agree with Donna on the screening of loading docks as far as in addition to Item No. 3. We are in agreement with that. On Item No. 4, Parcel No. 12a is being developed as a theater. The Warren Theater has bought that 20 acres and is developing a theater site in there."

The architect had asked me as far as the signage and the spires, he wanted to have some creative flexibility on three locations. One on K-96, one for the main entrance coming in off of 13th Street and one for the main entrance coming off of Greenwich where he could do some creative signage for the theater and some of the other major developments that would occur on the large parcel. Where he would do the signage part of the sign, would he still be limited to 35 feet, the actual verbiage lighted-up portion, but he wanted to be able to do some type of ornate ironwork or something above it. As you saw on the slide of the Warren Theater out west, they have kind of a spire that stands up above the marquee. They wanted to have some of that possible on these three locations. I am suggesting that possibly we would ask for the three locations to permit the signs for the spires or whatnot, and maybe tie that in to an approval by the Director of Planning and the Director of Central Inspection. So that somebody has some review of it so it is not that they can do whatever they want."

The developers that are going to be doing this site are going to be doing a classy development out here, I think, and I don't think whatever they design out here is going to be objectionable. Somebody else may think it is. But other than that, we are in agreement with the staff comments, and I am here to answer any questions."

BARFIELD "Might I ask the names of the applicants?"

HARTMAN "Mr. Laham is developing the commercial site. Warren Theaters is the theater development that is going to be developing the 20 acre theater site."

BARFIELD "The entertainment is what I am curious about."

HARTMAN "That is a combination between Ritchie Development and Laham Development."

BARFIELD "They are going to operate this?"

HARTMAN "They are the ones developing it."

BARFIELD "I want to talk about who is going to operate it."

HARTMAN "As far as I know, they are."

BARFIELD "Okay."

PLATT "What size sign did you say you wanted to have? Not the spire, the sign itself."

HARTMAN "The sign itself would be whatever the Code requires. Thirty-five foot would be maximum height of the actual signage portion of the entry monuments."

PLATT "Is it 250 square feet?"

HARTMAN "Uh huh."

PLATT "Okay. I just wanted to be clear."

CARRAHER "Are there any further questions of the applicant? Thank you. Is there anyone in the gallery to speak in favor of or in opposition to the item? Seeing none, we will bring it back to the Commission. Is there any commentary from the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Most of the property surrounding DP-239 The Gateway Center is vacant. The area to the north is zoned for commercial uses near the intersection of 13th and Greenwich, and the property near K-96 is platted for a church. East of K-96 there is a church and residential development. The property to the south is vacant but zoned for residential use; the next tract to the south is being developed with residences, (Preston Trails). The property to the west is proposed for commercial and multi-family uses, but currently zoned "LC" and "SF-20." The rest of the property to the west is owned by Raytheon and is used as a test plane runway. The suitability of the subject property for the uses to which it has been restricted: The property could be developed in conformance to the existing C.U.P. plan. Extent to which removal of the restrictions will detrimentally affect nearby property: Unless restrictions are incorporated to limit outdoor recreation, dining, and the more intense commercial uses such as service stations and drive-in restaurants near residential areas, the development would be anticipated to reduce the suitability of the adjacent areas for residential uses. The presence of a large concentration of drinking establishments seems incompatible with churches and places of worship. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed amendments are in conformance with the *Comprehensive Plan* in terms of its use as "commercial." The site is not one that was identified in the *Comprehensive Plan* for a large retail commercial development such as would result from establishment of a multi-screen theater complex and the concentration of restaurants and drinking establishments. However, it does have good access from an interchange on K-96. The proposed development could be viewed as contrary to the efforts to revitalize the City's core area. Impact of the proposed development on community facilities: The proposed uses would be expected to generate a high volume of traffic. 13th Street North is improved to 5-lane standards. With the addition of transportation improvements required by the original C.U.P. on Greenwich and 13th, the arterial roads should be able to accommodate the traffic. The uses will require extension of water and sewer services.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. Drinking establishments shall be prohibited on Parcels 10 and 11. No outdoor recreation or outdoor food and drink shall be allowed within 200 feet of the south property line.

2. General Provision #3 shall retain its exclusion of service stations, convenience stores with gas islands, restaurants with drive-in and drive-through facilities, and vehicle repair, limited, within 200 feet of residentially zoned property.
3. A screening wall shall be provided in the 5-foot wall easement along the south property line.
4. Spires and ornamental towers, as approved by the Director of Planning and the Zoning Administrator, may be attached to three signs, but shall not exceed 45 feet in height.
5. Signs shall not exceed 250 square feet in size.
6. General Provision #15 regarding screening of loading areas, trash receptacles, outside storage and docks shall be retained as approved in the original C.U.P. (General Provision #16).
7. General Provision #17 regarding pedestrian walks shall be retained as approved in the original C.U.P. (General Provision #18).
8. No recreation and entertainment, outdoor, shall be permitted without submission and approval of a separate site plan in conformance with the requirements of Sec. V-D of the Unified Zoning Code as an amendment to the C.U.P.
9. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
10. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
11. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by MAPC, or the Governing Body, if required, or the request shall be considered denied and closed.

MCKAY moved, **MICHAELIS** seconded the motion.

BARFIELD "Due to the proximity of residential and church uses to this proposal, I am going to make a substitute motion.

SUBSTITUTE MOTION: That the request be denied.

BARFIELD moved, and the motion died for lack of a second.

CARRAHER "Is there any discussion with regard to the motion on the floor?"

GAROFALO "I don't know whether this is proper now, but we didn't talk anything about accesses, like Greenwich and whatever."

KROUT "This is an amendment to a C.U.P. They are not asking to change any, and we are satisfied with what was done the last time."

GAROFALO "Okay. As long as they aren't asking for any changes."

VOTE ON THE MOTION: The motion carried with 11 votes in favor, and one in opposition (Barfield). Osborne-Howes was not present.

13. **Case No. CON2000-00036** - Gary Norris-Collision Specialist (owner); Charles Lawson (applicant) request a Condition Use to allow a car wash located within 200 feet of residential zoning on property zoned "LI" Limited Industrial with a Protective Overlay, described as:

South 110 feet of Lot 1, Block 1, Kuhlman Addition, Wichita, Kansas, Sedgwick County, Kansas. Generally located on the northeast corner of Webb and Mellor.

DALE MILLER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is seeking a Conditional Use permit to allow a car wash on property zoned "LI" Limited Industrial with a Protective Overlay (restricted uses) to be located within 200 feet of residential zoning. A car wash is a permitted use under the terms of the Protective Overlay. "TF-3" Two-family zoning is located to the northeast, approximately within 15 feet of the application area. The application area is .81 acre in size, and is located at the northeast corner of Mellor and Webb. The applicant's site plan depicts eight self-service bays, two automated bays and a

mechanical room. The open ends of the bays are to be oriented to the north and south. The building would be constructed of split-face block with a hip roof. Four queuing spaces are depicted for all stalls. All the bays are set back 50 feet from roadways. Nineteen drying and vacuum spaces are indicated along the east and west property lines. Access to the site is via a shared approach on Webb, which is ensured by a cross lot circulation agreement, and one approach off of Mellor. The site plan depicts landscaping along the southern boundary, although it appears that most of the landscaping would be in the right-of-way.

Neighboring zoning and land uses include the "LI" Limited Industrial, "SF-6" Single-family Residential and "LC" Limited Commercial districts with single-family homes, retail convenience sales center, aircraft manufacture, bank, school, and vacant land.

Car washes are permitted as uses "by-right" in the "LC", "GC", "CBD", "IP", "LI" and "GI" districts unless they are located within 200 feet of residential zoning. If residential zoning is within 200 feet of the application area then the MAPC must approve a Conditional Use application and specific conditions must be met:

1. 35 foot setback from arterials, expressways or freeways. Other required setbacks include: 20 feet from right-of-way; compliance with recorded setbacks; or the average setback.
2. All structures shall be setback 60 feet from the lot line of any residential zoned lot. This setback requirement does not apply if the residentially zoned lot is not being used for residential purposes permitted by right in the underlying zoning district or if the governing body has a policy that favors LC or higher intensity zoning for the contiguous area.
3. A fence with a minimum height of six feet shall be provided along the interior side and rear property line where adjacent to a dwelling unit. The fence shall be constructed of masonry, concrete, wood or other similar materials.
4. All area to be utilized by the washing and drying operations, including ingress and egress, shall be paved with concrete, asphalt or asphaltic concrete.
5. Zoning standards for lighting shall apply.
6. Signs are limited to those permitted in the underlying district.
7. Circulation plan is to be approved by the Traffic Engineer.
8. Parking areas shall be developed in a manner that prohibits vehicles from overhanging adjoining property.
9. No ingress or egress is permitted from minor streets with less than 60 feet of right-of-way, unless there are two free-moving lanes available at all times
10. Drainage shall be handled in a manner satisfactory to public works officials.
11. The site shall be properly policed for proper maintenance and removal of trash.

A minimum of four queuing spaces are required for each self-service car wash stall while only three queuing spaces are needed for the automatic stalls. This site will require street yard landscaping along Webb and screening of queuing and holding areas.

CASE HISTORY: In December 1997, SCZ-757 granted "LI" Limited Industrial zoning, subject to platting and a Protective Overlay. Car washes are an approved use per the conditions contained in the "Protective Overlay". The Kuhlman Addition was recorded in March 1999.

ADJACENT ZONING AND LAND USE:

NORTH:	"LI" Limited Industrial; mobile home and single-family site built homes
SOUTH:	"LI" Limited Industrial; Convenience retail sales center and aircraft manufacturing support services (Flight Safety)
EAST:	"LI" Limited Industrial and "SF-6", Single-family Residential: vacant and residences
WEST:	"SF-6" Single-family and "LC", Limited Commercial; school and bank

PUBLIC SERVICES: At the Webb Road and Central Avenue intersection, Webb Road carries 18,000 to 19,000 vehicles on an average day. Central carries an average of 16,000 vehicles through that same intersection. Webb Road has been designated and built as a 4-lane arterial. Mellor is a paved two-lane, one-way west roadway. Public water and sewer services are available. With a limited sample on which to base average daily trips projections, the "Trip Generation" manual indicates car washes generate between 6 and 21 average daily trips per bay. This facility could generate between 60 and 210 average daily trips.

CONFORMANCE TO PLANS/POLICIES: The recently adopted 2030 Comprehensive Plan indicates this area is appropriate for industrial uses. The plan does not speak specifically to car washes. However, the plan indicates commercial uses should be located adjacent to arterial streets or major thoroughfares that provide needed access in order to avoid traffic congestion. Commercial developments should employ site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. Further commercial uses should be located in areas with similar development; and in areas where traffic patterns, surrounding land uses and utilities can support such development.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site of the car wash shall be developed and maintained in compliance with the adopted site plan, and Section III-D.6.f of the Unified Zoning Code.
- B. The applicant shall submit a landscape plan for approval by the Planning Director, prior to the issuance of a building permit, that meets the code requirements.
- C. The applicant has one year from the time of approval to begin construction on the project.
- D. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. This area of Webb Road has recently been developing with office, commercial and industrial uses. Surrounding areas are zoned a variety of districts: "LI" Limited Industrial, SF-6, Single-family Residential and "LC" Limited Commercial. Properties on the north, east and south of the application area are zoned "LI". Existing land uses include: single-family residential, auto body repair, aircraft manufacturing, banking, school and commercial retail uses. The area is a mix of uses and is experiencing re-development pressure.
2. The suitability of the subject property for the uses to which it has been restricted. The site is currently zoned "LI" Limited Industrial with a Protective Overlay that limits uses to those contained in the Protective Overlay. Car washes are a permitted use per the Protective Overlay. A Conditional Use is required to construct a car wash when the site is located within 200 feet of residential zoning. This site is 15 feet from a lot zoned "SF-6". The site is probably too small for many of the uses first listed in the "LI" district. However, it could be developed for uses that are permitted under the site's current use restrictions.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to adjoining uses (auto body shop and convenience shopping) and code required setbacks and landscaping.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan indicates this site is appropriate for "industrial" uses. Given the land uses, zoning and roadways adjoining this site, the request is in conformance with adopted location guidelines for commercial uses.
5. Impact of the proposed development on community facilities: None identified.

MCKAY "Mr. Chair, I have a conflict of interest on this item. The applicant is my nephew. I will step down, and I have a meeting to go to at 6:00 o'clock, so I am leaving now.

McKay left the meeting.

Barfield left the meeting at 6:05 p.m.

MILLER "This is a request for a car wash, located at the northeast corner of Mellor and Webb Road. The applicant is here. I will run through the slides if you need them, but if you don't, the applicant and I have talked and they are comfortable with the recommendations that are contained in the staff report, unless you need more discussion."

LOPEZ "I want to see the slides."

MILLER "Okay. The site plan should be attached to your staff report. There is a bank to the southwest, across Webb Road, and Minneha School is straight west. The Collision Specialists are located immediately north of the proposed car wash. There are homes located to the east, and a vacant tract that is zoned 'LI' to the east. There is Flight Safety, which is a part of Raytheon, and a convenience strip center that fronts Webb."

CARRAHER "Are there any questions of staff? Thank you. Would the applicant like to address the item?"

DON FOLGER "I am the agent for the applicant. We are in total agreement with staff, and I don't have anything else to add. We have talked to the neighbors that are in the residences to the east and both of them seem satisfied and happy with this. One of those is zoned 'LI', and the other one would like to make his zoned 'LI', but I was just talking to him and telling him it cost \$500 to apply and he said he would wait. He was here earlier and he left."

CARRAHER "Are there any questions of the applicant? Seeing none, is there anyone in the gallery who wants to speak either for or against the item? We will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. This area of Webb Road has recently been developing with office, commercial and industrial uses. Surrounding areas are zoned a variety of districts: "LI" Limited Industrial, SF-6, Single-family Residential and "LC" Limited Commercial. Properties on the north, east and south of the application area are zoned "LI". Existing land uses include: single-family residential, auto body

repair, aircraft manufacturing, banking, school and commercial retail uses. The area is a mix of uses and is experiencing re-development pressure. The suitability of the subject property for the uses to which it has been restricted. The site is currently zoned "LI" Limited Industrial with a Protective Overlay that limits uses to those contained in the Protective Overlay. Car washes are a permitted use per the Protective Overlay. A Conditional Use is required to construct a car wash when the site is located within 200 feet of residential zoning. This site is 15 feet from a lot zoned "SF-6". The site is probably too small for many of the uses first listed in the "LI" district. However, it could be developed for uses that are permitted under the site's current use restrictions. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to adjoining uses (auto body shop and convenience shopping) and code required setbacks and landscaping. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan indicates this site is appropriate for "industrial" uses. Given the land uses, zoning and roadways adjoining this site, the request is in conformance with adopted location guidelines for commercial uses. Impact of the proposed development on community facilities: None identified.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

LOPEZ moved, HENTZEN second the motion, and it carried unanimously (10-0).

14. **Case No. CON2000-00035** - Jack E. and Gynnie C. Smith (Applicants/Owners) request a Conditional Use to permit ancillary parking in the "TF-3" Two-Family Residential District on property described as:

Lot 1, Block 10 & N 250 part of Reserve A, adjacent on the west, Eichholtz Addition to the City of Wichita, Kansas Sedgwick County Kansas. Generally located 1/4 block south of Harry and on the West Side of Green Street.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicants are requesting a Conditional Use to permit ancillary parking in the "TF-3" Two-Family Residential District on a platted .08-acre tract of land. This property is located ¼ block south of Harry and west of Green Street. The application area is just south of a commercial cluster of buildings that are south of Harry and between Green Street on the east and Popular Street on the west (City Wide Appliances, Smith Shoe Shop, tire store, etc.). In May 1999, a tornado struck this commercial area and destroyed one BBQ business and a former Dairy Queen restaurant. There was damage to structures and roofs of other businesses and residential homes as well. The applicants are in the process of building another commercial building just north of the application area (site of the former destroyed businesses) that will front Green Street. The applicants want to provide additional parking for an existing appliance store and the new building.

The applicants have recently purchased the residential property to the south of their commercial site (1621 South Green). They intend to use a portion of the northern part of the property for an ancillary parking lot. Currently there is a chain link fence just south of a vacated alley (VAC2000-00024) that runs east west between the existing commercial building, the building site to the east and the application area. The applicants will remove the chain link fence, construct a parking lot approximately 50 feet to the south and then erect a solid screening fence, of standard construction materials, along the southern perimeter of the parking lot. This area will serve as the ancillary parking lot for the one commercial building and the commercial building that is currently being built to the north. The proposed parking lot will have a single 24-foot entrance along the west side of Green Street that lines up with the alley across Green Street to the east. Additionally, there is a six-foot wooden screening fence provided to the west.

The applicants have submitted a site plan that shows an ancillary parking lot that has 11 parking spaces. The guidelines of the Unified Zoning Code requires that off-street parking and loading facilities be provided for any new building being constructed. In addition, one of required parking spaces would be specifically designated, located and reserved for use by persons with disabilities. The current site plan lacks specificity and is unclear. The applicant will need to submit a revised site plan and landscape plan to be approved by staff.

CASE HISTORY: The application area (Lot 1) was platted in May 1887 as the Eichholtz Addition.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Limited Commercial	Commercial Buildings
EAST: "SF-6" Single-Family Residential	Single-Family Residence
SOUTH: "SF-6" Single-Family Residential	Single-Family Residence
WEST: "SF-6" Single-Family Residential	Single-Family Residence

PUBLIC SERVICES: Water and sewer services are available but will not be required for the proposed ancillary parking lot. 1999 traffic volumes along Harry, near Green, were estimated at 24,005 average daily trips (ADTs). 2030 projections are estimated to be 28,487 ADTs. Traffic volumes (ADTs) along Green Street are not rated.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "low density residential" uses. This low density residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivision and planned developments with a mix of housing types that may include townhouses and multi-family units. Schools, churches and other similar uses are also found in this category. This request for ancillary parking does not conform to the designation of the Land Use Guide of the Comprehensive Plan for "low density residential" uses. There are, however, commercial uses directly north and northwest of the application area that are zoned "LC" Limited Commercial. There are also commercial uses one-half block to the east along and south of Harry. The Wichita Residential Area Enhancement Strategy Map shows this area as being appropriate for "revitalization" efforts.

RECOMMENDATION: Based on the information available prior to the public hearing, and a site plan showing the location of the ancillary parking lot, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The applicants will submit a revised site plan for approval by the Planning Director.
2. The Conditional Use shall only be permitted for an ancillary parking lot. There will no parking of commercial vehicles without amending the Conditional Use permit.
3. The ancillary park lot shall be paved and properly striped.
4. Parking lot screening and street yard landscaping on the east side of the lot, and buffer trees along the south and west property lines, shall be planted and maintained according to a plan submitted to and approved by the Planning Director.
5. There will be one parking slot designated for handicapped parking. All parking spaces reserved for persons with disabilities shall comply with the size requirements of the Americans with Disabilities Act and other applicable codes.
6. The applicants shall erect and maintain a six-foot fence, of standard construction materials, along the southern perimeter of the ancillary parking lot, and shall maintain the existing six-foot wooden fence along the west perimeter of Reserve "A" of the ancillary parking lot.
7. There shall be screening provided for all dumpsters and/or trash receptacles that may be placed on the ancillary parking lot.
8. The applicants shall submit a landscape plan for approval by the Director of Planning that complies with the Landscaping Ordinance.
9. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** There are single-family homes located to the south, west and east that are zoned "SF-6" Single-Family Residential. The Chisholm Life Skills Center building is located one block south of the application area. The business properties directly to the north, and south of Harry between Green and Popular Streets, are zoned "LC" Limited Commercial. There are a number of commercial businesses in this one block area.
2. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Staff is recommending that the applicants erect a six-foot screening fence, constructed of standard building materials, along the southern property line, maintain an existing wooden fence along the western property line and add landscaping along the property line abutting residential lots in an effort to minimize any negative impact to nearby properties.
3. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies:** The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "low density residential" uses. This low density residential category provides for the lowest density of urban residential land use and consists of single-family detached homes, zero lot line units, cluster subdivision and planned developments with a mix of housing types that may include townhouses and multi-family units. Schools, churches and other similar uses are also found in this category. This request for ancillary parking does not conform to the designation of the Land Use Guide of the Comprehensive Plan for "low residential" uses. There are, however, commercial uses directly north and northwest of the application area that is zoned "LC" Limited Commercial. There are also commercial uses one-half block to the east along and south of Harry. The Wichita Residential Area Enhancement Strategy Map as being appropriate for "revitalization" efforts classifies this area. Over the years, the MAPC and City Council have had an informal policy of generally supporting requests to expand existing businesses.

4. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "SF-6" and is developed with a single-family home. Based upon the requirements of the Unified Zoning Code requirements for ancillary parking, the applicants are required to obtain a Conditional Use in order to use this property for ancillary parking purposes.
5. Impact of the proposed development on community facilities: The business expansion planned to the north with this parking lot to will generate additional traffic along Green Street. The proposed ancillary parking lot will minimize on-street parking.

CARROLL "This area is zoned 'TF-3' Two-Family Residential; it is 0.8 acres. It was hit by a tornado in May of 1999 which destroyed one business, a barbeque restaurant. The applicants are in the process of building another building just north of the application area and want to provide parking. They have recently purchased the residence to the south and will use part of that yard going south for the ancillary parking lot. The lot will have one single entrance off of the west side of Green and we are asking that a new site plan be submitted. This one lacks specificity, and we are asking for a revised site plan to be approved by the Director. In summary, we are recommending approval, subject to the nine conditions. Jack Smith, the applicant and owner is present, and I would answer any questions that you might have."

CARRAHER "Are there any questions of staff? Seeing none, does the applicant wish to speak with regards to the issue?"

JACK SMITH "My property is at 2519 East Harry. The property right north of the subject property has been a City alley. It came off of Green Street and dead-ended on our property. In other words, it didn't go anywhere, so we couldn't do anything with that. It was just north of that green area there. It has been an unsightly mess. We recently got that alley vacated so that could do something with it ourselves, and then we find that it is still too narrow to be of any use. Any expense to asphalt it or something of that nature isn't justified. So when the house came up for sale that had this lot that we want to use for parking, we bought the house, hoping that we could use that lot to increase the width of that alley into the lot and make it useful for parking; therefore justifying the expense for asphalt and screening and make it something useful. Dumpsters will be there, but it will be big enough that we could screen them and beautify the whole thing. Those are my only comments."

HENTZEN "On that house you bought, it is still there to the south, isn't it?"

SMITH "Yes, it is."

HENTZEN "Yeah. And it is going to stay there?"

SMITH "It is going to stay there. It still has a 20-foot side yard on that side."

HENTZEN "Yeah, on the north side of that house. Yeah."

CARRAHER "Are there any other questions for the applicant? Seeing none, thank you, sir. Is there anyone in the gallery wishing to speak either for or against this item?"

CONNIE ROSENKRANS "I live at 1636 Green. One thing about being the last case is that you don't have to speak in front of everybody--everybody is gone. Some of the people we had asked to come couldn't come and some left. I have a petition of about 25 names of elderly people that live on the block that couldn't come for various reasons, mainly because they are elderly or they have children."

I had to make some notes because, like I said, I am not used to speaking in front of people. I am a wife that stays home and we like to maintain our area. We maintain our homes on that block and the homes are valued at about \$60,000 to \$80,000. We participate in the Meade Association and Neighborhood Watch, and we have block parties.

I am all in favor of progress, but I am not in favor of it at our expense. Jack Smith has, the applicant here, has requested the change. He doesn't keep up his property. As he mentioned, it is a mess and it isn't because of the tornado. We have all rebuilt our properties and kept them up. He doesn't choose good renters who would do the same. As you can see, in some of those slides, there is trash, tires, boxes from large appliance, some times as many as 25 to 30 broken appliances with doors off and such with children playing in the area. He mentioned the cluttered alley, but these appliances and the tires are on the parking lot and we have had to view them all summer. In fact for at least a year.

Like I said, there was a truck there that was full of trash for a year. We called the City and they finally got rid of that. Other people on the block have to maintain the property. We go over there and pick up trash. One elderly neighbor man mowed the property for one summer. People have now began to use that parking lot as a dumping spot for their trash and they don't even live in the area. We have witnessed people who are going down there at night and dump off these appliances. He already mentioned that he had already taken over the alley, which was given to him over a period of years, and now he wants more property. This summer, most of the renters moved out and left it to a used car lot. They were using it for a used car lot to park cars to sell that blocked the sidewalk.

My main point is that we like our area, we like our property. Jack Smith has not kept up the property on the other side that he rebuilt and he has not kept up this property. If he rebuilds, that is fine, but who do we call, then, when all of these things come up? We call the City. We call them about once a month for some various reason; trash, dumping

appliances. We have asked him to keep those appliances up, and the people he gets in there to rent don't care about the neighborhood. I visited with one of his renters and he said that we lived in a low scum area and so what was our beef? Or what was our concern? He called us nosey blank, blank, blanks. But our concern is that we do like our area. We don't live in Tallgrass, but we maintain nice homes and we are proud of them."

CARRAHER "Are there any questions of the speaker?"

MARNELL "I saw the trash in pictures, notwithstanding your comments about the trash. It looks like it needs some general clean up."

ROSENKRANS "And all of those appliances that were on the parking lot? This summer, we counted 25 of them. We took pictures and one of the men that couldn't stay tonight because of his children, called the City and said that there were children that played down there. The barbeque that was torn down by the storm, all kinds of people have gathered behind that building, dope addicts and such, but the main thing is that the people that he rents to aren't concerned with our neighborhood like we are."

MARNELL "Okay. I would assume that there is some activity with Central Inspection that could help deal with that problem. My question for you, however, is that it sounds like turning this into a parking lot and then screening it will actually improve your neighborhood, so I would think that you would be in favor of this as opposed to opposing it."

ROSENKRANS "Well, that is what we are hoping. That could be. My main thing in coming this afternoon was to point out that he doesn't usually maintain his property. That has been over a period of years since I have lived there that it has just looked really trashy. I think he admitted that. And it wasn't because of the tornado. Yes, the building was blown down, but he could have helped us keep it up. But I do have a list, as I said, of about 25 neighbors that have the same concerns as I do. The trash is mainly the reason that I was concerned. It also mentions shrubs in the staff report. I don't know who is going to take care of the shrubs because he doesn't take care of the property as you can see in the pictures."

MARNELL "Thank you."

JOHNSON "Ma'am, could you show me on the map where you live from the application?"

ROSENKRANS "Where I live? I am No. 17 and 19 on that little drawing on the staff report. We all have real nice yards, we maintain them."

JOHNSON "Are you on Poplar?"

ROSENKRANS "No, I am on Green. I am just down the street from that."

CARRAHER "Are there any further questions of the speaker? Okay, thank you."

JOHNSON "Marvin, could you explain to her on this Conditional Use that there will be certain requirements that will be certain requirements that are on it that will have to be met or he will lose it?"

KROUT "Yes. Of course, there are also requirements on how this property is supposed to be kept up today and there are obviously violations, but if he is not keeping up his property, if he is not keeping the landscaping plans maintained, and if there are flagrant or continuing violations, then he will not be allowed to continue to use the parking lot. So there is an incentive for him to keep the property up in order to be able to continue to have the use as a parking lot."

CARRAHER "Is there anyone else to speak in opposition?"

MARJORIE DEMOURE "I live at 1616 South Green. That is directly across the street from where he wants to put that parking lot. I have only lived there about 2-1/2 years, but I thought I was buying into a residential area, not a commercial area. It is unsightly. And where he wants to put the parking lot, he has the existing buildings, as you can see, the existing buildings and new buildings....those are the back of buildings. So in other words, for those people to use that parking lot, they are going to have to go all the way around the whole building to use it. That is going to be real convenient. So you know what it is going to be, it is going to be trash. That is what it is going to be. It is not going to be for parking."

I had storm damage, too. I had to redo my whole house, put all new siding on and everything. I fixed it up nice...that was so I could have a parking lot across the street? There have been cars that were there from the appliance building that I have caught guys sneaking around cars that were left there all night. Because it was lit up at that time. It is not lit up now. So I don't know what is going on. Mr. Smith used to live there, but he has moved now, so he doesn't have to look at it. That is all I have got to say."

CARRAHER "Are there any questions of the speaker? Okay. Thank you. Next speaker."

WENDY AYLWORTH "I live at 1722 South Spruce. I am the past president of the Meade Neighborhood Association. Our current president could not be here this evening. He was not notified of this by mail. Our Neighborhood Association was not notified; our District Advisory Board was not notified. None of the neighbors were notified. I happened to be on the Metropolitan Area Planning Commission mailing list, so I received this. Fortunately I wasn't real busy that day and I opened the mail and found out about this. So I let the neighbors know about it."

First of all, the problems with Central Inspection. We call over and over and over. We have the Meade Neighborhood Patrol and we have taken a number of pictures of this area over the years, it is constantly filthy. The area behind the buildings is the worst. Central Inspection takes too long to get hold of. The Health Department is the same thing. They won't get rid of the tires or the appliances. They are allowed to stay there, which we don't like. As you know, this is an area of single-family homes, and he is talking about where the dumpsters would be located. They will be behind the buildings. The trash trucks are going to have to go through there, same thing. The dumpsters now are not utilized and I have photographs for you to see close up. You have seen those other photographs, which are from a distance. If you will turn to the second page here, this is some things that you should notice in the photographs. This is current pictures, and here are some close-ups of some of the recent photographs that were taken by patrol, and as far back as January and March. It is a consistent problem. I just have a couple of pages, so it won't take you too long to look through them.

Okay. If there are going to be new businesses in the area, are there restrictions on what type on what type of businesses will be allowed there? Are we going to have to put up with liquor stores? We currently have illicit drug deals going on in that area, large amounts of cars that gather at his rental property. The home they have now turned into a rental property, and they gather there late at night. Like the one neighbor lady said, there are guys that creep around the cars and it is very frightening for the neighbors. Are adult bookstores going to be allowed? What about an adult cinema? Liquor stores? We want to make sure that those things are not in the area. We have enough trouble with crime. There are apartments across the street on Harry and also down east of Harry, just one block over begins a large amount of apartment buildings.

After the tornado damaged our homes, we were looted by people from those apartments. They cause trouble all of the time and if there are any of these adult businesses or liquor stores or drinking establishments allowed, we are going to have more and more problems. We have recently had several burglaries in the area, which is similar to the way he is planning this, which is putting parking behind buildings. We don't want any more parking allowed behind buildings because of the fact that it is not allowed to be seen. When those parking areas cannot be seen, what happens is that those people who want to commit the illegal acts go into those areas. We have had people, and I am going to put this bluntly, doing sex acts on the parking lots behind buildings, behind plants, behind shrubbery. We do not want a parking lot there because the people will drive in there and they will do sex acts.

There have been rapes. People have been dragged into those areas to be raped. Assaults, battery....it goes on and on. We have a lot of drug activity going on. Drug deals. They will go into these areas where they cannot be viewed because it is behind a building again, and it will be far enough from and screened from the street. It is a nice area to go in and hide out, near the trash dumpsters and all of the other junk that is going to be piled up around there.

Also, this parking lot is going to become a thoroughway--an open street between Green and Poplar, which means people are going to race through there, the people that get off the Interstate at Harry and I-135 and are evading the Highway Patrol. They will come through there, and they have in the past, raced up and down our streets. They are going to use this little area behind the buildings as just another place to race through and evade the police.

Again, the dumping; the loud car stereos at night. They go back in that area and play them. It is ideal because they can't be seen. Also, the staff report is wrong. There were not two businesses destroyed. There never was a Dairy Queen there. The building is also going to be allowed to be built clear up to 10 feet of the sidewalk."

CARRAHER "Ma'am, your time is up. Would you like to have some additional time?"

AYLWORTH "Yes, please."

MOTION: That the speaker's time be extended for 1 minute.

GAROFALO moved, **WARREN** seconded the motion, and it carried unanimously.

AYLWORTH "Thank you. The Hundred Acre Wood, which is on the corner of Grove and Harry will soon be a vacant building. It is going out of business. That is on the southeast corner of Grove and Harry. On the southwest corner of Grove and Harry, that will also be a vacant building. It is going out of business, too. Why are we building more commercial property? We would allow the commercial property, but there are certain conditions we would request, and that is the very first page I have handwritten in the photo album where I have written at the top of the paper 'requests'. That is what we would request to be put in, but we would rather not have a parking lot.

If there is to be a parking lot, we would like to have a wrought iron gate closing it off from Green Street and from Poplar. The iron gate should be pulled closed and locked from 9:00 p.m. to 8:00 p.m., please, to keep people out of that area. There is an easement running between the houses between Green and Poplar, between their back yards. The illegal activity will extend all of the way back through there, as it has in the past."

JOHNSON "I don't disagree with what you are saying about what is there. I guess my question is if it comes down to, if we don't do anything today, I guess it can continue like it is. Do you see anything positive about the screening where you didn't have to look at trash dumpsters or whatever. Is that a better situation than this?"

ALYWORTH "What would be better would be to have the dumpster over near Poplar, which faces a commercial property already, and make sure it is left there. It is on my list of requests that is on the photo album, and have it accessed only from Poplar where there are homes only facing one side of the street. And no dumpster from the Green side because there are homes on each side of Green and homes that face right into the commercial property on Green. If we could keep the dumpsters out of the Green Street area and be accessed only from Poplar, that would solve a lot of problems and not allow any through traffic through that area. And the tire piles could also be kept out of that area."

JOHNSON "Are you saying that there is an alleyway that goes from Green clear to Poplar?"

ALYWORTH "It will be once Jack Smith builds this. If he builds a parking lot there, yes, that will open it up all the way from Green to Poplar."

JOHNSON "Will you point that out to us on the map? It looks to me like the alley ends about mid block. It doesn't go on to Poplar."

ALYWORTH (Indicating) "Yeah, it is open right here to Poplar. You can see in the photographs all of the vehicles and camping trailers and everything he has parked in there. He owns this rental area here (indicating), which is a junky trailer and a bunch of junky outbuildings. He allows someone to park all kinds of junk vehicles there and junk trailers. It is pretty much alley now. There is a small alley behind the new building he built there, which is the west wing of the permit that he was allowed to build."

JOHNSON "It goes clear to Poplar?"

ALYWORTH "Yes, it is open clear to Poplar, and a lot of it is grass and dirt right now, but once it is paved, it is going to become a nice thoroughfare."

JOHNSON "Where is Poplar on that map? Donna, could you show us?"

ALYWORTH "(Indicating) This is all pavement here. The new building is built here, and it is all pavement right up against there. Once he gets the parking lot in, it is going to be pavement all the way through."

CARRAHER "Just a quick reminder to my colleagues. Please be sure that you are recognized before you have a comment or ask a question. Are there any further questions of the speaker? Thank you. I believe the applicant has a two minute rebuttal."

SMITH "As I indicated with my opening statements, I couldn't do anything with that alley area legally because it was a City platted alley up until about two months ago. The alley does not extend all the way to Poplar. There is an area there that is only about four feet wide and that alley will extend all of the way to Poplar. There is a mobile home park, licensed, on Poplar, just west of this. It has been unsightly, I know that, and it will be removed in the near future."

When the tornado hit and destroyed those two buildings, I was initially in despair about what I was going to do, and then realized the opportunity to improve what has been. I understand that I am the poor boy in the neighborhood. An example of what the property will look like is there for everybody to view. The west side of the new buildings are practically done and ready for inspection. That is what the entire property will look alike when we are finished.

There will be a new building on the east side of the property, on the Green Street side of the property that will look every bit as good as the new building does on the west side of the property. The parking lot that is proposed on this lot here will be screened, it will be landscaped, it will have dumpsters in it that will be screened and locked so that the neighborhood can't use our dumpsters for a public dump. We intend to have a park-like atmosphere on the street on Green."

CARRAHER "Are there any questions for the applicant?"

GAROFALO "Do you have to have the dumpsters and things in that particular area? Can't they be placed somewhere else?"

SMITH "Not on the front parking lot. Would you want a dumpster on your front parking lot?"

GAROFALO "No, not necessarily on the front."

SMITH "Every business has to have a dumpster somewhere. That is the most logical place."

MARNELL "I have a question for staff in regard to this. Since we are only dealing with this one parcel here, and the neighbors have expressed a concern about that turning into a thoroughfare, and we are putting a screening fence around this, can we require that fence on the west end of that parcel so that it blocks that through movement of traffic all the way across?"

CARROLL "This alley has been vacated. There is a screening fence on the west. It does not run all of the way through, so I don't think that is an issue. We are requiring him to maintain the existing wood fence to the west."

WARREN "I am a little confused. The way this site plan lays out and how I am looking at it on the map, will somebody look at this site plan so they can follow along."

CARROLL "Okay."

WARREN "I am looking at Lot 1 that is the subject lot, what we are talking about. To the west of that, there is a Lot 35. Lot 35 belongs to the applicant?"

SMITH "Yes."

WARREN "And do I understand that there is going to be a fence across the back of Lot 35 and Lot 1? You are going to screen that whole area?"

SMITH "Yes."

WARREN "Okay. And I think Commissioner Marnell has suggested that maybe that screening run on north a lot or two. Was that clear?"

SMITH "That screening fence will abut up against the back of the new building. There will not be an opening there."

WARREN "So they will not be able to get traffic through?"

SMITH "Not four wheeled."

WARREN "Now on this Lot 1, do you say that there is a house on it that you are going to allow to remain?"

SMITH "There is a house south of it."

WARREN "South on Lot 2?"

SMITH "On Lots 2,3 and 4."

WARREN "Okay. There is not a house on Lot 1 though?"

SMITH "No."

JOHNSON "Sir, have you met with your neighbors in the area about this situation?"

SMITH "Only one of them saw fit to investigate what was going to happen."

JOHNSON "Would you be willing to meet with them?"

SMITH "Sure."

JOHNSON "Because they have made a list here of some things. Apparently there have been some problems and if we can solve some of them, I would like to take the time to do it."

SMITH "I am aware of the problems. Some of them, since the barbeque building was demolished on their side of the property, it has looked like a vacant lot. The appliance fellow that rented the building didn't do a good job of keeping that property up."

JOHNSON "Would you be opposed to a deferral where you could meet with the neighborhood and maybe with the District Advisory Board? Is that something you could do?"

KROUT "That is a great idea."

SMITH "I would be willing to do whatever is necessary."

WARREN "Is this going to require a replat?"

JOHNSON "No, this is a one-shot deal."

CARRAHER "Are there any further questions of the applicant? Back to the Commission."

MOTION: That the item be deferred for four weeks to the October 19 MAPC meeting and that the item go before the District Advisory Board for review.

MICHAELIS moved, **HENTZEN** seconded the motion.

KROUT "That will be enough time to schedule a District Advisory Board meeting, Barry, in early October, and for Mr. Smith to meet with the neighborhood.

CARRAHER "Are there any questions or comments regarding the motion on the floor?"

JOHNSON "I would just like to make it known, though, that we do want everybody to get together. We don't want to defer it for four weeks and then not have any additional information."

KROUT "Maybe the parties can get together before you leave this evening to try to arrange something."

SMITH "I doubt that very much. We are going to leave just as soon as we get through with this vote."

LOPEZ "My only comment was to make sure when since there is quite a bit of neighborhood concern about it that it does go before the D.A.B."

KROUT "Is that part of the motion?"

MICHAELIS "Yes."

CARRAHER "Are there any further questions or commentary on the motion? Seeing none, we will move to a voice vote."

MOTION: The motion carried with 10 votes in favor. There was no opposition.

Item taken out of order:

16. Discussion on public notice for Subdivision Plats

CARRAHER "Would anybody object to having this item moved to the next meeting? All right."

15. Case No. A-0015 - The City of Wichita seeks the annexation of properties generally located north of 21st Street North and east and west of Hoover Road.

KROUT "This is the second phase of a 6 phase annexation for the 21st and Hoover area. We are asking you to find that the unilateral annexation compatible with the adopted Comprehensive Plan.

MOTION: That the Metropolitan Area Planning Commission find that the annexation is consistent with the adopted Comprehensive Plan.

GAROFALO moved, **LOPEZ** seconded the motion, and it carried unanimously (10-0).

CARRAHER "Is there any other discussion?"

MICHAELIS "I would just like to throw a couple of things out. We have heard the comment over and over that these people can't hear. I think we are all guilty of leaning back and not talking into the microphone. I would like to see us make an effort to talk more into the microphone, or if we could do something staff-wise to get better amplification.

Also, I just want to throw out something else to think about. It is the idea of possibly doing a retreat amongst ourselves, just for inner-Commission thoughts and ideas. We are starting a new regime here, and we can make sure that if there is anything we can do to speed up the process and help the process, or maybe if there are things that we are doing that maybe we can do differently. Just to throw out some ideas. I think it would be good for all of us. I would just like for you to think about that and maybe at the next Commission meeting we can discuss it a little bit more."

WARREN "What kind of a time frame...like half a day?"

MICHAELIS "Oh, I don't know if it would take that long, but I would say at the maximum, half a day."

KROUT "We have done that from time to time. It was almost every year for a little while and then we got away from it. So I think it is a good idea. Think about agenda items, maybe, and then we can have a little discussion at the next Planning Commission meeting as to discuss what we would put on the agenda. I think you do have to have an agenda, so we can prepare and you can prepare for it."

WARREN "Are these by and large open meetings?"

KROUT "They would have to be open meetings by State law. But we could have them outside of City Hall. Someplace that is a little more informal."

CARRAHER "Very quickly, before we adjourn, I want to thank everybody for their patience. I am still getting used to things and seeing as how we had, including the Subdivision issues that were pulled, a little under 20 items, I think we have made decent time. With that in mind, I will open the floor for a motion for adjournment."

MOTION: That the Metropolitan Area Planning Commission adjourn.

JOHNSON moved, **GAROFALO** seconded the motion, and it carried unanimously (10-0).

The Metropolitan Area Planning Commission formally adjourned at 6:40 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)